

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1241

Introduced by

Representative DeKrey

Senator Nething

1 A BILL for an Act to create and enact section 10-19.1-00.1, a new section to chapter 10-19.1, a
2 new subsection to section 10-19.1-48, sections 10-19.1-74.1 and 10-19.1-139.1, a new section
3 to chapter 10-32, section 10-32-42.1, a new subsection to section 10-32-85, section
4 10-33-01.3, a new subsection to section 10-33-44, and sections 10-33-72.1, 10-34-02.1,
5 45-10.2-06.1, and 45-13-02.1 of the North Dakota Century Code, relating to business
6 corporations, limited liability companies, nonprofit corporations, real estate investment trusts,
7 limited partnerships, and partnerships; and to amend and reenact sections 10-19.1-01,
8 10-19.1-01.2, 10-19.1-10, 10-19.1-13, and 10-19.1-23, subsection 2 of section 10-19.1-39,
9 section 10-19.1-41, subsection 3 of section 10-19.1-61, section 10-19.1-63, subsection 1 of
10 section 10-19.1-65, subsection 6 of section 10-19.1-66, section 10-19.1-69, subsection 1 of
11 section 10-19.1-75, subsection 1 of section 10-19.1-76.1, subsection 2 of section 10-19.1-84,
12 section 10-19.1-87, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, and
13 10-19.1-98, subsection 1 of section 10-19.1-99, section 10-19.1-100, subsection 1 of section
14 10-19.1-100.1, section 10-19.1-101, subsection 2 of section 10-19.1-102, sections
15 10-19.1-102.1, 10-19.1-103, and 10-19.1-104, subsection 2 of section 10-19.1-104.1,
16 subsection 1 of section 10-19.1-110, sections 10-19.1-146, 10-19.1-147, 10-32-02, 10-32-07,
17 10-32-10, and 10-32-27, subsection 1 of section 10-32-37, section 10-32-43, subsection 1 of
18 section 10-32-76, subsection 2 of section 10-32-94, section 10-32-100, subsection 1 of section
19 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104 and
20 10-32-105, subsections 2 and 3 of section 10-32-106, sections 10-32-106.1 and 10-32-107,
21 subsection 4 of section 10-32-108, sections 10-33-01, 10-33-06, 10-33-10, 10-33-34, and
22 10-33-73, subsection 40 of section 45-10.2-02, subsection 1 of section 45-10.2-27, section
23 45-10.2-81, subsection 26 of section 45-13-01, subsection 6 of section 45-13-05, subsection 24
24 of section 45-22-01, subsection 2 of section 45-22-22, and subsection 24 of section 45-23-01 of
25 the North Dakota Century Code, relating to business corporations, limited liability companies,

1 nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and
2 limited liability limited partnerships.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 10-19.1-00.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **10-19.1-00.1. Citation.** This chapter may be cited as the "North Dakota Business
7 Corporation Act."

8 **SECTION 2. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise
11 requires:

- 12 1. "Acquiring corporation" means the domestic or foreign corporation that acquires
13 the shares of a corporation in an exchange.
- 14 2. "Acquiring organization" means the ~~corporation~~, foreign ~~corporation~~, or domestic or
15 ~~foreign limited liability company~~ organization acquiring in an exchange the shares
16 ownership interests of a corporation or another foreign corporation or the
17 ~~membership interests of a domestic or foreign limited liability company~~ or domestic
18 organization participating in an exchange.
- 19 3. "Address" means:
 - 20 a. In the case of a registered office or principal executive office, the mailing
21 address, including the zip code, of the actual office location, which may not be
22 only a post-office box; and
 - 23 b. In any other case, the mailing address, including the zip code.
- 24 4. "Articles" means:
 - 25 a. In the case of a corporation incorporated under or governed by this chapter,
26 articles of incorporation, articles of amendment, a resolution of election to
27 become governed by this chapter, a demand retaining the two-thirds majority
28 for shareholder approval of certain transactions, a statement of change of
29 registered office, registered agent, or name of registered agent, a statement
30 establishing or fixing the rights and preferences of a class or series of shares,

- 1 a statement of cancellation of authorized shares, articles of merger, articles of
2 abandonment, articles of conversion, and articles of dissolution.
- 3 b. In the case of a foreign corporation, the term includes all records serving a
4 similar function required to be filed with the secretary of state or other officer
5 of the ~~corporation's~~ state of incorporation of the foreign corporation.
- 6 5. "Authenticated electronic communication" means:
- 7 a. That the electronic communication is delivered:
- 8 (1) To the principal place of business of the corporation; or
9 (2) To an officer or agent of the corporation authorized by the corporation
10 to receive the electronic communication; and
- 11 b. That the electronic communication sets forth information from which the
12 corporation can reasonably conclude that the electronic communication was
13 sent by the purported sender.
- 14 6. "Ballot" means a written ballot or a ballot transmitted by electronic
15 communications.
- 16 7. "Board" or "board of directors" means the board of directors of a corporation.
- 17 8. "Board member" means:
- 18 a. An individual serving on the board of directors in the case of a corporation;
19 and
20 b. An individual serving on the board of governors in the case of a limited liability
21 company.
- 22 9. "Bylaws" means the code adopted for the regulation or management of the internal
23 affairs of a corporation, regardless of how that code is designated.
- 24 10. "Class", when used with reference to ~~shares~~ ownership interests, means a
25 category of ~~shares~~ ownership interests that differs in designation or one or more
26 rights or preferences from another category of ~~shares~~ ownership interests of the
27 ~~corporation~~ organization.
- 28 11. "Closely held corporation" means a corporation that does not have more than
29 thirty-five shareholders.
- 30 12. "Constituent corporation" means a corporation or a foreign corporation that:

- 1 a. In a merger, is either the surviving corporation or a foreign or domestic
2 corporation that is merged into the surviving organization; or
- 3 b. In an exchange, is either the acquiring corporation or a foreign or domestic
4 corporation whose shares are acquired by the acquiring organization.
- 5 13. "Constituent organization" means ~~a corporation, foreign corporation, limited liability~~
6 ~~company, or foreign limited liability company~~ an organization that:
- 7 a. In a merger, is either the surviving organization or an organization that is
8 merged into the surviving organization; or
- 9 b. In an exchange, is either the acquiring organization or an organization whose
10 securities are acquired by the acquiring organization.
- 11 14. "Converted organization" means the organization into which a converting
12 organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 13 15. "Converting organization" means an organization that converts into another
14 organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 15 16. "Corporation" or "domestic corporation" means a corporation, other than a foreign
16 corporation, organized for profit and incorporated under or governed by this
17 chapter.
- 18 17. "Director" means a member of the board.
- 19 18. "Distribution" means a direct or indirect transfer of money or other property, other
20 than ~~a corporation's~~ its own shares, with or without consideration, or an incurrence
21 or issuance of indebtedness, by a corporation to any of ~~the corporation's~~ its
22 shareholders in respect of ~~the corporation's~~ its shares, and may be in the form of a
23 dividend, an interim distribution, or a distribution in liquidation, or as consideration
24 for the purchase, redemption, or other acquisition of ~~the corporation's~~ its shares, or
25 otherwise.
- 26 19. "Division" or "combination" means dividing or combining shares of a class or
27 series, whether issued or unissued, into a greater or lesser number of shares of
28 the same class or series.
- 29 20. "Domestic organization" means an organization created under the laws of this
30 state.

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- 1 21. "Electronic" means relating to technology having electrical, digital, magnetic,
2 wireless, optical, electromagnetic, or similar capabilities.
- 3 22. "Electronic communication" means any form of communication, not directly
4 involving the physical transmission of paper that:
5 a. Creates a record that may be retained, retrieved, and reviewed by a recipient
6 of the communication; and
7 b. May be directly reproduced in paper form by the recipient through an
8 automated process.
- 9 23. "Electronic record" means a record created, generated, sent, communicated,
10 received, or stored by electronic means.
- 11 24. "Electronic signature" means an electronic sound, symbol, or process attached to
12 or logically associated with a record and signed or adopted by a person with the
13 intent to sign the record.
- 14 25. "Filed with the secretary of state" means, except as otherwise permitted by law or
15 rule:
16 a. That a record meeting the applicable requirements of this chapter, together
17 with the fees provided in section 10-19.1-147, was delivered or
18 communicated to the secretary of state by a method or medium of
19 communication acceptable by the secretary of state and was determined by
20 the secretary of state to conform to law.
21 b. That the secretary of state did then:
22 (1) Record the actual date on which the record was filed, and if different
23 the effective date of filing; and
24 (2) Record the record in the office of the secretary of state.
- 25 26. "Foreign corporation" means a corporation organized for profit which is
26 incorporated under laws other than the laws of this state for a purpose for which a
27 corporation may be incorporated under this chapter.
- 28 27. "Foreign limited liability company" means a limited liability company organized
29 under laws other than the laws of this state for a purpose for which a limited liability
30 company may be organized under chapter 10-32.

- 1 28. "Foreign organization" means an organization created under laws other than the
2 laws of this state for a purpose for which an organization may be created under the
3 laws of this state.
- 4 29. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 5 30. "Governing body" means for an organization that is:
6 a. A corporation, its board of directors;
7 b. A limited liability company, its board of governors; or
8 c. Any other organization, the body selected by its owners that has the ultimate
9 power to determine the policies of the organization and to control its policies.
- 10 31. "Governing statute" of an organization means:
11 a. With respect to a domestic organization, the following chapters of this code
12 which govern the internal affairs of the organization:
13 (1) If a corporation, then this chapter;
14 (2) If a limited liability company, then chapter 10-32;
15 (3) If a general partnership, then chapters 45-13 through 45-21;
16 (4) If a limited partnership, then chapter 45-10.2;
17 (5) If a limited liability partnership, then chapter 45-22; and
18 (6) If a limited liability limited partnership, then chapter 45-23; and
19 b. With respect to a foreign organization, the laws of the jurisdiction under which
20 the organization is created and under which the internal affairs of the
21 organization are governed.
- 22 ~~31.~~ 32. "Intentionally" means that the person referred to has a purpose to do or fail to do
23 the act or cause the result specified or believes that the act or failure to act, if
24 successful, will cause that result. A person "intentionally" violates a statute:
25 a. If the person intentionally does the act or causes the result prohibited by the
26 statute; or
27 b. If the person intentionally fails to do the act or cause the result required by the
28 statute, even though the person may not know of the existence or
29 constitutionality of the statute or the scope or meaning of the terms used in
30 the statute.

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- 1 ~~32.~~ 33. "Legal representative" means a person empowered to act for another person,
2 including an agent, a manager, an officer, a partner, or an associate of an
3 organization; a trustee of a trust; a personal representative; a trustee in
4 bankruptcy; and a receiver, guardian, custodian, or conservator.
- 5 ~~33.~~ 34. "Limited liability company" or "domestic limited liability company" means a limited
6 liability company, other than a foreign limited liability company, organized under or
7 governed by chapter 10-32.
- 8 ~~34.~~ 35. "Nonprofit corporation" means a corporation, whether domestic or foreign,
9 incorporated under or governed by chapter 10-33.
- 10 ~~35.~~ 36. "Notice":
- 11 a. Is given by a shareholder of a corporation to the corporation or an officer of
12 the corporation:.
- 13 (1) When in writing and mailed or delivered to the corporation or the officer
14 at the registered office or principal executive office of the corporation;
15 or
16 (2) When given by a form of electronic communication consented to by the
17 corporation to which the notice is given if by:
- 18 (a) Facsimile communication, when directed to a telephone number
19 at which the corporation has consented to receive notice.
- 20 (b) Electronic mail, when directed to an electronic mail address at
21 which the corporation has consented to receive notice.
- 22 (c) Posting on an electronic network on which the corporation has
23 consented to receive notice, together with separate notice to the
24 corporation of the specific posting, upon the later of:
- 25 [1] The posting; or
26 [2] The giving of the separate notice.
- 27 (d) Any other form of electronic communication by which the
28 corporation has consented to receive notice, when directed to the
29 corporation.
- 30 b. Is given by a publicly held corporation to a shareholder if the notice is
31 addressed to the shareholder or group of shareholders in a manner permitted

- 1 by the rules and regulations under the Securities Exchange Act of 1934, as
2 amended, provided that the corporation has first received any affirmative
3 written consent or implied consent required under those rules and regulations.
- 4 c. Is given, in all other cases:
- 5 (1) When mailed to the person at an address designated by the person or
6 at the last-known address of the person;
- 7 (2) When handed to the person;
- 8 (3) When left at the office of the person with a clerk or other person in
9 charge of the office or:
- 10 (a) If there is no one in charge, when left in a conspicuous place in
11 the office; or
- 12 (b) If the office is closed or the person to be notified has no office,
13 when left at the dwelling house or usual place of abode of the
14 person with some person of suitable age and discretion then
15 residing there; or
- 16 (4) When given by a form of electronic communication consented to by the
17 person to whom the notice is given if by:
- 18 (a) Facsimile communication, when directed to a telephone number
19 at which the person has consented to receive notice.
- 20 (b) Electronic mail, when directed to an electronic mail address at
21 which the person has consented to receive notice.
- 22 (c) Posting on an electronic network on which the person has
23 consented to receive notice, together with separate notice to the
24 person of the specific posting, upon the later of:
- 25 [1] The posting; or
- 26 [2] The giving of the separate notice.
- 27 (d) Any other form of electronic communication by which the person
28 has consented to receive notice, when directed to the person.
- 29 (5) When the method is fair and reasonable when all of the circumstances
30 are considered.

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- 1 d. Is given by mail when deposited in the United States mail with sufficient
2 postage affixed.
- 3 e. Is deemed received when it is given.
- 4 ~~36.~~ 37. "Officer" means an individual who is eighteen years of age or more who is:
5 a. Elected, appointed, or otherwise designated as an officer by the board; or
6 b. Deemed elected as an officer pursuant to section 10-19.1-56.
- 7 ~~37.~~ 38. "Organization" means:
8 a. Whether domestic or foreign, a corporation, limited liability company, general
9 partnership, limited partnership, limited liability partnership, limited liability
10 limited partnership, or any other person subject to a governing statute; but
11 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
12 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
13 which is incorporated in another jurisdiction.
- 14 39. "Originating records" means for an organization that is:
15 a. A corporation, its articles of incorporation;
16 b. A limited liability company, its articles of organization;
17 c. A limited partnership, its certificate of limited partnership;
18 d. A limited liability partnership, its registration; or
19 e. A limited liability limited partnership, its certificate of limited liability limited
20 partnership.
- 21 ~~38.~~ 40. "Outstanding shares" means all shares duly issued and not reacquired by a
22 corporation.
- 23 ~~39.~~ 41. "Owners" means:
24 a. ~~Shareholders in the case of a corporation; and~~
25 b. ~~Members in the case of a limited liability company or a nonprofit corporation~~
26 the holders of ownership interests in an organization.
- 27 ~~40.~~ 42. "Ownership interests" means for ~~an~~ a domestic or foreign organization that is:
28 a. A corporation, its shares;
29 b. A limited liability company, its membership interests;
30 c. A limited partnership, its partnership interests;
31 d. A general partnership, its partnership interests;

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- 1 e. A limited liability partnership, its partnership interests; ~~or~~
- 2 f. A limited liability limited partnership, its partnership interests; or
- 3 g. Any other organization, its governance or transferable interests.
- 4 ~~44.~~ 43. "Parent" of a specified ~~corporation~~ organization means ~~a corporation, a foreign~~
5 ~~corporation, a limited liability company, or a foreign limited liability company~~ an
6 organization that directly, or indirectly through related organizations, owns more
7 than fifty percent of the voting power of the ~~shares~~ ownership interests entitled to
8 vote for directors or other members of the governing body of the specified
9 ~~corporation~~ organization.
- 10 ~~42.~~ 44. "Principal executive office" means:
- 11 a. If the corporation has an elected or appointed president, then an office where
12 the elected or appointed president of a corporation has an office; or
- 13 b. If the corporation has no elected or appointed president, then the registered
14 office of the corporation.
- 15 ~~43.~~ 45. "Record" means information that is inscribed on a tangible medium or that is stored
16 in an electronic or other medium and is retrievable in perceivable form.
- 17 ~~44.~~ 46. "Registered office" means the place in this state designated in a corporation's
18 articles of incorporation or in a foreign corporation's certificate of authority as the
19 registered office.
- 20 ~~45.~~ 47. "Related organization" means an organization that controls, is controlled by, or is
21 under common control with another organization with control existing if an
22 organization:
- 23 a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership~~
24 ~~interests, or other~~ ownership interests of another organization;
- 25 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
26 more of the voting members of the governing body of another organization; or
- 27 c. Has the power, directly or indirectly, to direct or cause the direction of the
28 management and policies of another organization, whether through the
29 ownership of voting interests, by contract, or otherwise.
- 30 ~~46.~~ 48. "Remote communication" means communication via electronic communication,
31 conference telephone, videoconference, the internet, or such other means by

- 1 which persons not physically present in the same location may communicate with
2 each other on a substantially simultaneous basis.
- 3 ~~47.~~ 49. "Security" has the meaning given in section 10-04-02.
- 4 ~~48.~~ 50. "Series" means a category of shares, within a class of shares authorized or issued
5 by a corporation by or pursuant to a corporation's articles, that have some of the
6 same rights and preferences as other shares within the same class, but that differ
7 in designation or one or more rights and preferences from another category of
8 shares within that class.
- 9 ~~49.~~ 51. "Share" means one of the units, however designated, into which the shareholders'
10 proprietary interests of the shareholder in a corporation are divided.
- 11 ~~50.~~ 52. "Shareholder" means a person registered on the books or records of a corporation
12 or the corporation's transfer agent or registrar as the owner of whole or fractional
13 shares of the corporation.
- 14 ~~51.~~ 53. "Signed" means:
- 15 a. That the signature of a person, which may be a facsimile affixed, engraved,
16 printed, placed, stamped with indelible ink, transmitted by facsimile
17 telecommunication or electronically, or in any other manner reproduced on
18 the record, is placed on a record, ~~as provided under section 41-01-14~~ with the
19 present intention to authenticate that record; and
- 20 b. With respect to a record required by this chapter to be filed with the secretary
21 of state, that:
- 22 (1) The record is signed by a person authorized to do so by this chapter,
23 the articles or bylaws, or a resolution approved by the directors as
24 required under section 10-19.1-46 or the shareholders as required
25 under section 10-19.1-74; and
- 26 (2) The signature and the record are communicated by a method or
27 medium of communication acceptable by the secretary of state.
- 28 ~~52.~~ 54. "Subscriber" means a person that subscribes for shares in a corporation, whether
29 before or after incorporation.
- 30 ~~53.~~ 55. "Subsidiary" of a specified ~~corporation~~ organization means:

- 1 a. ~~A corporation or a foreign corporation having more than fifty percent of the~~
2 ~~voting power of its shares entitled to vote for directors owned directly, or~~
3 ~~indirectly through related organizations, by the specified corporation; or~~
4 b. ~~A limited liability company or a foreign limited liability company having more~~
5 ~~than fifty percent of the voting power of its membership interests entitled to~~
6 ~~vote for governors owned directly, or indirectly through related limited liability~~
7 ~~companies or corporations, by the specified limited liability company an~~
8 ~~organization having more than fifty percent of the voting power of its~~
9 ~~ownership interests entitled to vote for directors, governors, or other members~~
10 ~~of the governing body of the organization owned directly, or indirectly, through~~
11 ~~related organizations, by the specified organization.~~

12 ~~54.~~ 56. "Surviving corporation" means the domestic or foreign corporation resulting from a
13 merger which:

- 14 a. May preexist the merger; or
15 b. May be created by the merger.

16 ~~55.~~ 57. "Surviving organization" means the ~~corporation or foreign corporation or domestic~~
17 ~~or foreign limited liability company~~ organization resulting from a merger which:

- 18 a. May preexist the merger; or
19 b. May be created by the merger.

20 ~~56.~~ 58. "Vote" includes authorization by written action.

21 ~~57.~~ 59. "Written action" means:

- 22 a. A written record signed by all of the persons required to take the action; or
23 b. The counterparts of a written record signed by any of the persons taking the
24 action described.
25 (1) Each counterpart constitutes the action of the person signing; and
26 (2) All the counterparts, taken together, constitute one written action by all
27 of the persons signing the counterparts.

28 **SECTION 3. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code
29 is amended and reenacted as follows:

30 **10-19.1-01.2. Knowledge and notice.**

- 1 1. A person knows or has knowledge of a fact if the person has actual knowledge of
- 2 it. A person does not know or have knowledge of a fact merely because the
- 3 person has reason to know or have knowledge of the fact.
- 4 2. A person has notice of a fact if the person:
- 5 a. Knows of the fact;
- 6 b. Has received notice of the fact as provided in subsection ~~35~~ 36 of section
- 7 10-19.1-01;
- 8 c. Has reason to know the fact exists from all of the facts known to the person at
- 9 the time in question; or
- 10 d. Has notice of it under subsection 3.
- 11 3. Subject to subsection 8, a person has notice of:
- 12 a. The intention of a corporation to dissolve, ninety days after the effective date
- 13 of the filed notice of intent to dissolve;
- 14 b. The dissolution of a corporation, ninety days after the effective date of the
- 15 filed articles of dissolution;
- 16 c. The conversion of a corporation, ninety days after the effective date of the
- 17 filed articles of conversion; or
- 18 d. The merger of a corporation, ninety days after the effective date of the filed
- 19 articles of merger.
- 20 4. A person notifies or gives a notification to another person by taking the steps
- 21 provided in subsection ~~35~~ 36 of section 10-19.1-01, whether or not the other
- 22 person learns of it.
- 23 5. A person receives a notification as provided in subsection ~~35~~ 36 of section
- 24 10-19.1-01.
- 25 6. Except as otherwise provided in subsection 7 and except as otherwise provided in
- 26 subsection ~~35~~ 36 of section 10-19.1-01, a person other than an individual knows,
- 27 has notice, or receives a notification of a fact for purposes of a particular
- 28 transaction when the individual conducting the transaction for the person knows,
- 29 has notice, or receives a notification of the fact, or in any event when the fact
- 30 would have been brought to the attention of the individual if the person had
- 31 exercised reasonable diligence.

- 1 a. A person other than an individual exercises reasonable diligence if it
2 maintains reasonable routines for communicating significant information to
3 the individual conducting the transaction for the person and there is
4 reasonable compliance with the routines.
- 5 b. Reasonable diligence does not require an individual acting for the person to
6 communicate information unless the communication is part of the regular
7 duties of the individual or the individual has reason to know of the transaction
8 and that the transaction would be materially affected by the information.
- 9 7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by
10 an officer or director is effective immediately as knowledge of, notice to, or receipt
11 of a notification by the corporation, except in the case of a fraud on the corporation
12 committed by or with the consent of the officer or director. Knowledge, notice, or
13 receipt of a notification of a fact relating to the corporation by a shareholder who is
14 not an officer or director, is not effective as knowledge by, notice to, or receipt of a
15 notification by the corporation.
- 16 8. Notice otherwise effective under subsection 3 does not affect the power of a
17 person to transfer real property held in the name of a corporation unless at the
18 time of transfer a certified copy of the relevant statement, amendment, or articles,
19 as filed with the secretary of state, has been recorded in the office of the county
20 recorder in the county in which the real property affected by the statement,
21 amendment, or articles is located.
- 22 9. With respect to notice given by a form of electronic communication:
- 23 a. Consent by an officer or director to notice given by electronic communication
24 may be given in writing or by authenticated electronic communication. The
25 corporation is entitled to rely on any consent so given until revoked by the
26 officer or director. However, no revocation affects the validity of any notice
27 given before receipt by the corporation of revocation of the consent.
- 28 b. An affidavit of an officer or director or an authorized agent of the corporation,
29 that the notice has been given by a form of electronic communication is, in the
30 absence of fraud, prima facie evidence of the facts stated in the affidavit.

1 **SECTION 4.** A new section to chapter 10-19.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Reservation of legislative right.** The legislative assembly reserves the right to amend
4 or repeal the provisions of this chapter. A corporation incorporated under or governed by this
5 chapter is subject to this reserved right.

6 **SECTION 5. AMENDMENT.** Section 10-19.1-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-19.1-10. Articles.**

9 1. The articles of incorporation must contain:

- 10 a. The name of the corporation.
- 11 b. The address of the registered office of the corporation and the name of its
12 registered agent at that address.
- 13 c. The aggregate number of shares that the corporation has authority to issue.
- 14 d. The name and address of each incorporator.
- 15 e. The effective date of incorporation if a later date than that on which the
16 certificate of incorporation is issued by the secretary of state, which may not
17 be later than ninety days after the date on which the certificate of
18 incorporation is issued.

19 2. ~~The articles of incorporation may not contain;~~

- 20 a. ~~Any provision limiting the right of cumulative voting as guaranteed by~~
21 ~~section 6 of article XII of the Constitution of North Dakota.~~
- 22 b. ~~Any provision authorizing the issuance of stocks or bonds in violation of~~
23 ~~section 9 of article XII of the Constitution of North Dakota.~~

24 3. The following provisions govern a corporation unless modified in the articles:

- 25 a. A corporation has general business purposes as provided in section
26 10-19.1-08.
- 27 b. A corporation has perpetual existence and certain powers as provided in
28 section 10-19.1-26.
- 29 c. The power to adopt, amend, or repeal the bylaws is vested in the board as
30 provided in section 10-19.1-31.

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- 1 d. A corporation must allow cumulative voting for directors as provided in section
2 10-19.1-39.
- 3 e. The affirmative vote of a majority of directors present is required for an action
4 of the board as provided in section 10-19.1-46.
- 5 e- f. A written action by the board taken without a meeting must be signed by all
6 directors as provided in section 10-19.1-47.
- 7 f- g. The board may authorize the issuance of securities and rights to purchase
8 securities as provided in subsection 1 of section 10-19.1-61.
- 9 g- h. All shares are common shares entitled to vote and are of one class and one
10 series as provided in subdivisions a and b of subsection 2 of section
11 10-19.1-61.
- 12 h- i. All shares have equal rights and preferences in all matters not otherwise
13 provided for by the board as provided in subdivisions a and b of subsection 2
14 of section 10-19.1-61.
- 15 i- j. The par value of shares is fixed at one cent per share for certain purposes
16 and may be fixed by the board for certain other purposes as provided in
17 subdivisions a and b of subsection 2 of section 10-19.1-61.
- 18 j- k. Subject to article XII of the Constitution of North Dakota, the board or the
19 shareholders may issue shares for any consideration or for no consideration
20 to effectuate share dividends or splits and determine the value of
21 nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- 22 k- l. Shares of a class or series may not be issued to holders of shares of another
23 class or series to effectuate share dividends or splits, unless authorized by a
24 majority of the voting power of the shares of the same class or series as the
25 shares to be issued as provided in subsection 1 of section 10-19.1-63.
- 26 l- m. A corporation may issue rights to purchase securities whose terms,
27 provisions, and conditions are fixed by the board as provided in section
28 10-19.1-64.
- 29 n. A shareholder has certain preemptive rights, unless otherwise provided by the
30 board as provided in section 10-19.1-65.

- 1 ~~m.~~ o. The affirmative vote of the holders of a majority of the voting power of the
2 shares present and entitled to vote at a duly held meeting is required for an
3 action of the shareholders, except when this chapter requires the affirmative
4 vote of:
- 5 (1) A plurality of the votes cast as provided in subsection 1 of section
6 10-19.1-39; or
- 7 (2) A majority of the voting power of all shares entitled to vote as provided
8 in subsection 1 of section 10-19.1-74.
- 9 p. A written action of shareholders must be signed by all shareholders as
10 provided in section 19-19.1-75.
- 11 ~~n.~~ q. Shares of a corporation acquired by the corporation may be reissued as
12 provided in subsection 1 of section 10-19.1-93.
- 13 ~~e.~~ r. An exchange need not be approved by shareholders of the acquiring
14 corporation unless the outstanding shares entitled to vote of that corporation
15 will be increased by more than twenty percent immediately after the exchange
16 as provided in subdivision c of subsection 3 of section 10-19.1-98.
- 17 ~~p.~~ s. An exchange need not be approved by shareholders of the acquiring
18 corporation unless the outstanding participating shares of that corporation will
19 be increased by more than twenty percent immediately after the exchange as
20 provided in subdivision d of subsection 3 of section 10-19.1-98.
- 21 ~~e.~~ t. Each share has one vote unless otherwise provided in the terms of the share
22 as provided in subsection 5 of section 10-19.1-73.2.
- 23 ~~r.~~ u. The board may effect share dividends, divisions, and combinations under
24 certain circumstances without shareholder approval as provided in section
25 10-19.1-61.1.
- 26 ~~s.~~ ~~A written action of shareholders must be signed by all shareholders as~~
27 ~~provided in section 10-19.1-75.~~
- 28 ~~4.~~ 3. The following provisions govern a corporation unless modified either in the articles
29 or in the bylaws:
- 30 a. A director serves for an indefinite term that expires upon the election and
31 qualification of a successor as provided in section 10-19.1-35.

- 1 b. The compensation of directors is fixed by the board as provided in section
2 10-19.1-37.
- 3 c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for
4 removal of directors.
- 5 d. The method provided in section 10-19.1-42 must be used for filling board
6 vacancies.
- 7 e. If the board fails to select a place for a board meeting, it must be held at the
8 principal executive office as provided in subsection 1 of section 10-19.1-43.
- 9 f. A director may call a board meeting, and the notice of the meeting need not
10 state the purpose of the meeting as provided in subsection 3 of section
11 10-19.1-43.
- 12 g. A majority of the board is a quorum for a board meeting as provided in section
13 10-19.1-45.
- 14 h. A committee ~~must~~:
- 15 (1) Must consist of one or more ~~persons~~ individuals, who need not be
16 directors, appointed by affirmative vote of a majority of the directors
17 present as provided in subsection 2 of section 10-19.1-48; and
- 18 (2) May create one or more subcommittees, each consisting of one or
19 more members of the committees and may delegate to the
20 subcommittee any or all of the authority of the committee as provided in
21 subsection 7 of section 10-19.1-48.
- 22 i. The board may establish a special litigation committee as provided in section
23 10-19.1-48.
- 24 j. Unless the board determines otherwise, the officers have specified duties as
25 provided in section 10-19.1-53.
- 26 k. Officers may delegate some or all of their duties and powers, if not prohibited
27 by the board from doing so as provided in section 10-19.1-59.
- 28 l. The ~~board~~ corporation may establish uncertificated shares as provided in
29 subsection 6 of section 10-19.1-66.
- 30 m. Regular meetings of shareholders need not be held, unless demanded by a
31 shareholder under certain conditions as provided in section 10-19.1-71.

- 1 n. No fewer than ten nor more than fifty days' notice is required for a meeting of
2 shareholders as provided in subsection 3 of section 10-19.1-73.
- 3 o. The number of shares required for a quorum at a shareholders' meeting is a
4 majority of the voting power of the shares entitled to vote at the meeting as
5 provided in section 10-19.1-76.
- 6 p. The board may fix a date up to fifty days before the date of a shareholders'
7 meeting as the date for the determination of the holders of shares entitled to
8 notice of and entitled to vote at the meeting as provided in subsection 1 of
9 section 10-19.1-73.2.
- 10 q. Indemnification of certain persons is required as provided in section
11 10-19.1-91.
- 12 r. The board may authorize, and the corporation may make, distributions not
13 prohibited, limited, or restricted by an agreement as provided in subsection 1
14 of section 10-19.1-92.
- 15 ~~5.~~ 4. The following provisions relating to the management of the business or the
16 regulation of the affairs of a corporation may be included either in the articles or,
17 except for naming members of the first board fixing a greater than majority director
18 or shareholder vote or giving or prescribing the manner of giving voting rights to
19 persons other than shareholders otherwise than pursuant to the articles, or
20 eliminating or limiting a director's personal liability, in the bylaws:
- 21 a. The members of the first board may be named in the articles as provided in
22 subsection 1 of section 10-19.1-32.
- 23 b. A manner for increasing or decreasing the number of directors as provided in
24 section 10-19.1-33.
- 25 c. Additional qualifications for directors may be imposed as provided in section
26 10-19.1-34.
- 27 d. Directors may be classified as provided in section 10-19.1-38.
- 28 e. The day or date, time, and place of board meetings may be fixed as provided
29 in subsection 1 of section 10-19.1-43.
- 30 f. Absent directors may be permitted to give written consent or opposition to a
31 proposal as provided in section 10-19.1-44.

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- 1 g. A larger than majority vote may be required for board action as provided in
2 section 10-19.1-46.
- 3 h. Authority to sign and deliver certain documents may be delegated to an
4 officer or agent of the corporation other than the president as provided in
5 section 10-19.1-53.
- 6 i. Additional officers may be designated as provided in section 10-19.1-52.
- 7 j. Additional powers, rights, duties, and responsibilities may be given to officers
8 as provided in section 10-19.1-53.
- 9 k. A method for filling vacant offices may be specified as provided in
10 subsection 3 of section 10-19.1-58.
- 11 l. A certain officer or agent may be authorized to sign share certificates as
12 provided in subsection 1 of section 10-19.1-66.
- 13 m. The transfer or registration of transfer of securities may be restricted as
14 provided in section 10-19.1-70.
- 15 n. The day or date, time, and place of regular shareholder meetings may be
16 fixed as provided in subsection 3 of section 10-19.1-71.
- 17 o. Certain persons may be authorized to call special meetings of shareholders
18 as provided in subsection 1 of section 10-19.1-72.
- 19 p. Notices of shareholder meetings may be required to contain certain
20 information as provided in subsection 3 of section 10-19.1-73.
- 21 q. A larger than majority vote may be required for shareholder action as
22 provided in section 10-19.1-74.
- 23 r. Voting rights may be granted in or pursuant to the articles to persons who are
24 not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- 25 s. Corporate actions giving rise to dissenter rights may be designated as
26 provided in subdivision d of subsection 1 of section 10-19.1-87.
- 27 t. The rights and priorities of persons to receive distributions may be
28 established as provided in section 10-19.1-92.
- 29 u. A director's personal liability to the corporation or its shareholders for
30 monetary damages for breach of fiduciary duty as a director may be
31 eliminated or limited in the articles as provided in section 10-19.1-50.

- 1 ~~6-~~ 5. The articles may contain other provisions not inconsistent with section 10-19.1-32
2 or any other provision of law relating to the management of the business or the
3 regulation of the affairs of the corporation.
- 4 ~~7-~~ 6. It is not necessary to set forth in the articles any of the corporate powers granted
5 by this chapter.
- 6 ~~8-~~ 7. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action
7 that the bylaws may authorize under this section without including the authorization
8 in the bylaws, unless the authorization is required to be included in the bylaws by
9 another provision of this chapter.
- 10 8. Except for provisions included pursuant to subsection 1, any provision of the
11 articles may:
- 12 a. Be made dependent upon facts ascertainable outside the articles, but only if
13 the manner in which the facts operate upon the provision is clearly and
14 expressly set forth in the articles; and
- 15 b. Incorporate by reference some or all of the terms of any agreements,
16 contracts, or other arrangements entered into by the corporation, but only if
17 the corporation retains at its principal executive office a copy of the
18 agreements, contracts, or other arrangements or the portions incorporated by
19 reference.

20 **SECTION 6. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **10-19.1-13. Corporate name.**

- 23 1. The corporate name:
- 24 a. Must be in the English language or in any other language expressed in
25 English letters or characters.
- 26 b. Must contain the word "company", "corporation", "incorporated", "limited", or
27 an abbreviation of one or more of these words.
- 28 c. May not contain the words "limited liability company", "limited partnership",
29 "limited liability partnership", "limited liability limited partnership", or any
30 abbreviation of these words.
- 31 d. May not contain a word or phrase that indicates or implies the corporation:

- 1 (1) Is incorporated for a purpose other than:
 - 2 (a) A lawful business purpose for which a corporation may be
 - 3 incorporated under this chapter; or
 - 4 (b) For a purpose stated in its articles of incorporation; or
- 5 (2) May not be incorporated under this chapter.
- 6 e. May not be the same as, or deceptively similar to:
 - 7 (1) The name, whether foreign and authorized to do business in this state
 - 8 or domestic, unless there is filed with the articles a record that complies
 - 9 with subsection 3, of:
 - 10 (a) Another corporation;
 - 11 (b) A corporation incorporated or authorized to do business in this
 - 12 state under another chapter of this code;
 - 13 (c) A limited liability company;
 - 14 (d) A limited partnership;
 - 15 (e) A limited liability partnership; or
 - 16 (f) A limited liability limited partnership;
 - 17 (2) A name the right to which is, at the time of incorporation, reserved in
 - 18 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
 - 19 45-10.2-11, 45-13-04.2, or 45-22-05;
 - 20 (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - 21 (4) A trade name registered in the manner provided in chapter 47-25.
- 22 2. The secretary of state shall determine whether a corporate name is "deceptively
- 23 similar" to another name for purposes of this chapter.
- 24 3. If the secretary of state determines that a corporate name is "deceptively similar"
- 25 to another name for purposes of this chapter, then the corporate name may not be
- 26 used unless there is filed with the articles:
 - 27 a. The written consent of the holder of the rights to the name to which the
 - 28 proposed name has been determined to be deceptively similar; or
 - 29 b. A certified copy of a judgment of a court in this state establishing the prior
 - 30 right of the applicant to the use of the name in this state.

- 1 4. This subsection does not affect the right of a domestic corporation existing on
2 July 1, 1986, or a foreign corporation authorized to do business in this state on that
3 date to continue the use of its name.
- 4 5. This section and section 10-19.1-14 do not:
- 5 a. Abrogate or limit:
- 6 (1) The law of unfair competition or unfair practices;
- 7 (2) Chapter 47-25;
- 8 (3) The laws of the United States with respect to the right to acquire and
9 protect copyrights, trade names, trademarks, service names, service
10 marks; or
- 11 (4) Any other rights to the exclusive use of names or symbols; or
- 12 b. Derogate the common law or the principles of equity.
- 13 6. A domestic or foreign corporation that is the surviving organization in a merger with
14 one or more other organizations, or that acquires by sale, lease, or other
15 disposition to or exchange with an organization all or substantially all of the assets
16 of another organization including its name, may have the same name, subject to
17 the requirements of subsection 1, as that used in this state by any of the other
18 organizations, if the other organization whose name is sought to be used:
- 19 a. Was incorporated, organized, formed, or registered under the laws of this
20 state;
- 21 b. Is authorized to transact business or conduct activities in this state;
- 22 c. Holds a reserved name in the manner provided in section 10-19.1-14,
23 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
- 24 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 25 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 26 7. The use of a name by a corporation in violation of this section does not affect or
27 vitiate its corporate existence. However, a court in this state may, upon application
28 of the state or of an interested or affected person, enjoin the corporation from
29 doing business under a name assumed in violation of this section, although its
30 articles may have been filed with the secretary of state and a certificate of
31 incorporation issued.

- 1 8. A corporation whose period of existence has expired or that is involuntarily
2 dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire
3 the right to use that name by refiling articles of incorporation pursuant to section
4 10-19.1-11, unless the name has been adopted for use or reserved by another
5 person, in which case the filing will be rejected unless the filing is accompanied by
6 a written consent or judgment as provided in subsection 2. A corporation that
7 cannot reacquire the use of its corporate name shall adopt a new corporate name
8 that complies with the provisions of this section:
- 9 a. By refiling articles of incorporation pursuant to section 10-19.1-11;
10 b. By amending pursuant to section 10-19.1-17; or
11 c. By reinstating pursuant to section 10-19.1-146.
- 12 9. Subject to section 10-19.1-133, this section applies to any foreign corporation
13 transacting business in this state, having a certificate of authority to transact
14 business in this state, or applying for a certificate of authority.
- 15 10. An amendment that only changes the name of the corporation may be authorized
16 by a resolution approved by the board and may, but need not, be submitted to and
17 approved by the shareholders as provided in section 10-19.1-18.

18 **SECTION 7. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-19.1-23. Filing articles of amendment.** An original of the articles of amendment
21 must be filed with the secretary of state. If the secretary of state finds that the articles of
22 amendment conform to law and all fees have been paid as provided under section 10-19.1-147,
23 the articles of amendment must be recorded in the office of the secretary of state. A
24 corporation that amends the corporate name and is the owner of a trademark or trade name, is
25 a general partner named in a fictitious name certificate, or is a general partner in a limited
26 partnership or a limited liability limited partnership, or is a managing partner of a limited liability
27 partnership that is on file with the secretary of state must change or amend the corporation's
28 name in each registration when the corporation files an amendment.

29 **SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-39 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 1 2. ~~As provided in article XII of the Constitution of North Dakota~~ Unless otherwise
2 provided in the articles, and except as provided in subsection 4 of section
3 10-19.1-41, each shareholder entitled to vote for directors has the right to cumulate
4 those votes in all elections of directors by giving written notice of intent to cumulate
5 those votes to any officer of the corporation before the meeting, or to the presiding
6 officer at the meeting at which the election is to occur at any time before the
7 election of directors at the meeting, in which case:
- 8 a. The presiding officer at the meeting shall announce, before the election of
9 directors, that shareholders may cumulate their votes; and
- 10 b. Each shareholder shall cumulate those votes either by casting for one
11 candidate the number of votes equal to the number of directors to be elected
12 multiplied by the number of votes represented by the shares entitled to vote,
13 or by distributing all of those votes on the same principle among any number
14 of candidates.

15 **SECTION 9. AMENDMENT.** Section 10-19.1-41 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **10-19.1-41. Nonjudicial removal of directors.**

- 18 1. The provisions of this section apply unless modified by the articles, the bylaws, or
19 an agreement described in section 10-19.1-83.
- 20 2. A director may be removed at any time, with or without cause, if:
- 21 a. The director was named by the board to fill a vacancy;
- 22 b. The shareholders have not elected directors in the interval between the time
23 of the appointment to fill a vacancy and the time of the removal; and
- 24 c. A majority of the remaining directors present affirmatively vote to remove the
25 director.
- 26 3. ~~Any one~~ Except as provided in subsection 4, any or all of the directors may be
27 removed at any time, with or without cause, by the affirmative vote of the holders
28 of ~~the proportion or number~~ a majority of the voting power of ~~the all~~ shares of the
29 classes or series ~~the director represents sufficient to elect them. If less than the~~
30 entire board is to be removed, ~~no one of the directors may be removed if the votes~~
31 of a sufficient number of shares are cast against the director's removal which, if

- 1 ~~then cumulatively voted at an election of the entire board of directors, or, if there~~
2 ~~be classes of directors, at an election of the class of directors of which the director~~
3 ~~is a part, would be sufficient to elect the~~ entitled to vote at an election of directors.
4 ~~However, if a director. Whenever the holders of the~~ has been elected solely by the
5 ~~holders of a class or series of shares, as stated in the articles or bylaws, then that~~
6 ~~director may be removed only by the affirmative vote of the holders of a majority of~~
7 ~~the voting power of all shares of any that class are or series~~ entitled to elect one or
8 ~~more directors by the provisions of the articles of incorporation, the provisions of~~
9 ~~this section shall apply, in respect to the removal of a director or directors so~~
10 ~~elected, to the vote of the holders of the outstanding shares of that class and not to~~
11 ~~the vote of the outstanding shares as a whole~~ vote at an election of that director.
- 12 4. ~~New directors may be elected at a meeting at which directors are~~ In a corporation
13 ~~having cumulative voting, unless the entire board is removed~~ simultaneously, a
14 ~~director is not removed from the board if there are cast against removal of the~~
15 ~~director the votes of a proportion of the voting power sufficient to elect the director~~
16 ~~at an election of the entire board under cumulative voting.~~
- 17 5. New directors may be elected at a meeting at which directors are removed. If the
18 corporation allows cumulative voting and if a shareholder notifies the presiding
19 officer at any time prior to the election of new directors of interest to cumulate the
20 votes of the shareholders, then the presiding officer shall announce before the
21 election that cumulative voting is in effect and shareholders shall cumulate their
22 votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

23 **SECTION 10.** A new subsection to section 10-19.1-48 of the North Dakota Century
24 Code is created and enacted as follows:

- 25 Unless otherwise provided in the articles, the bylaws, or the resolution of the board
26 establishing the committee, a committee may create one or more subcommittees,
27 each consisting of one or more members of the committee, and may delegate to a
28 subcommittee any or all of the authority of the committee. In this chapter, unless
29 the language or the context clearly indicates that a different meaning is intended:
30 a. Any reference to a committee is deemed to include a subcommittee; and

- 1 b. Any reference to a committee member is deemed to include a subcommittee
2 member.

3 **SECTION 11. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 3. Subject to any restrictions in the articles, the power granted in subsection 2 may
6 be exercised by a resolution approved by the directors as required under section
7 10-19.1-46 establishing a class or series, setting forth the designation of the class
8 or series, and fixing the relative rights and preferences of the class or series. ~~Any~~
9 ~~of the rights and preferences of a class or series established in the articles or by~~
10 ~~resolution of the directors:~~

11 a. ~~May be made dependent upon facts ascertainable outside the articles or~~
12 ~~outside the resolution or resolutions establishing the class or series, provided~~
13 ~~that the manner in which the facts operate upon the rights and preferences of~~
14 ~~the class or series is clearly and expressly set forth in the articles or in the~~
15 ~~resolution or resolutions establishing the class or series; and~~

16 b. ~~May incorporate by reference any of the terms of any agreements, contracts,~~
17 ~~or other arrangements entered into by the issuing corporation in connection~~
18 ~~with the establishment of the class or series if the corporation retains at the~~
19 ~~principal executive office, a copy of the agreements, contracts, or other~~
20 ~~arrangements or portions incorporated by reference.~~

21 **SECTION 12. AMENDMENT.** Section 10-19.1-63 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **10-19.1-63. Consideration for shares - Value and payment - Liability.**

24 1. ~~Subject to article XII of the Constitution of North Dakota, consideration~~
25 Consideration for the issuance of shares may be paid, in whole or in part, in
26 money; in other property, tangible or intangible; or in labor or services actually
27 performed for the corporation. When payment of the consideration for which
28 shares are to be issued is received by the corporation, the shares are considered
29 fully paid and nonassessable. Neither promissory notes nor future services
30 constitute payment or part payment for shares of a corporation.

- 1 2. Subject to any restrictions in the articles, a corporation may, without any new or
2 additional consideration, ~~a corporation may~~ issue ~~the corporation's~~ its own shares
3 in exchange for or in conversion of ~~the corporation's~~ its outstanding shares, or
4 ~~may~~, subject to authorization of share dividends, divisions, and combinations
5 according to section 10-19.1-61.1, issue ~~the corporation's~~ its own shares pro rata
6 to ~~the corporation's~~ shareholders or the shareholders of one or more classes or
7 series, to effectuate share dividends, divisions, or combinations. ~~Shares~~ No
8 shares of a class or series, shares of which are then outstanding, ~~may not~~ shall be
9 issued to the holders of shares of another class or series, except in exchange for
10 or in conversion of outstanding shares of the other class or series, unless the
11 issuance is expressly provided for in the articles or is approved at a meeting by the
12 affirmative vote of the holders of a majority of the voting power of all shares of the
13 same class or series as the shares to be issued.
- 14 3. The determinations of the board or the shareholders as to the amount or fair value
15 or the fairness to the corporation of the consideration received or to be received by
16 the corporation for its shares or the terms of payment, as well as the agreement to
17 issue shares for that consideration, are presumed to be proper if they are made in
18 good faith and on the basis of accounting methods, or a fair valuation or other
19 method, reasonable in the circumstances. Unless otherwise required by the
20 articles, the consideration may be less than the par value, if any, of the shares.
21 Directors or shareholders who are present and entitled to vote, and who,
22 intentionally or without reasonable investigation, fail to vote against approving an
23 issue of shares for a consideration that is unfair to the corporation, or overvalue
24 property ~~or services~~ received or to be received by the corporation as consideration
25 for shares issued, are jointly and severally liable to the corporation for the benefit
26 of the then shareholders who did not consent to and are damaged by the action, to
27 the extent of the damages of those shareholders. A director or shareholder
28 against whom a claim is asserted pursuant to this ~~section~~ subsection, except in
29 case of knowing participation in a deliberate fraud, is entitled to contribution on an
30 equitable basis from other directors or shareholders who are liable under this
31 section.

- 1 4. A corporation may issue only shares that are nonassessable or that are
2 assessable but are issued with the unanimous consent of the shareholders.
3 "Nonassessable" shares are shares for which the agreed consideration has been
4 fully paid, delivered, or rendered to the corporation.
- 5 a. The reasonable charges and expenses of organization or reorganization of a
6 corporation, and the reasonable expenses of and compensation for the sale
7 or underwriting of its shares, may be paid or allowed by the corporation out of
8 the consideration received by it in payment for its shares without rendering
9 the shares not fully paid and nonassessable.
- 10 b. If shares are issued in violation of this subsection, then the following persons
11 are jointly and severally liable to the corporation for the difference between
12 the agreed consideration for the shares and the consideration actually
13 received by the corporation:
- 14 (1) A director or shareholder who was present and entitled to vote but who
15 failed to vote against the issuance of the shares knowing of the
16 violation;
- 17 (2) The person to whom the shares were issued; and
- 18 (3) A successor or transferee of the interest in the corporation of a person
19 described in paragraph 1 or 2, including a purchaser of shares, a
20 subsequent assignee, successor, or transferee, a pledgee, a holder of
21 any other security interest in the assets of the corporation or shares
22 granted by the person described in paragraph 1 or 2, or a legal
23 representative of or for the person or estate of the person, which
24 successor, transferee, purchaser, assignee, pledgee, holder, or
25 representative acquired the interest knowing of the violation.
- 26 5. A pledgee or holder of any other security interest in all or any shares that have
27 been issued in violation of subsection 4 is not liable under subdivision b of
28 subsection 4 if all those shares are surrendered to the corporation. The surrender
29 does not impair any rights of the pledgee or holder of any other security interest
30 against the pledgor or person granting the security interest.

- 1 6. A pledgee, holder of any other security interest, or legal representative is liable
2 under subdivision b of subsection 4 only in that capacity. The liability of the person
3 under subdivision a of subsection 4 is limited to the assets held in that capacity for
4 the person or estate of the person described in paragraph 1 or 2 of subdivision b of
5 subsection 4.
- 6 7. Each person liable under subdivision b of subsection 4 has a full right of
7 contribution on an equitable basis from all other persons liable under that
8 subdivision for the same transaction.
- 9 8. An action may not be maintained against a person under subdivision b of
10 subsection 4 unless commenced within two years from the date on which shares
11 are issued in violation of subsection 4.

12 **SECTION 13. AMENDMENT.** Subsection 1 of section 10-19.1-65 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota,~~
15 ~~a shareholder of a corporation has the preemptive rights provided in this section,~~
16 ~~unless~~ Unless denied or limited in the articles or by the board pursuant to
17 subdivision b of subsection 2 of section 10-19.1-61, a shareholder of a corporation
18 has the preemptive rights provided in this section.

19 **SECTION 14. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 6. Unless uncertificated shares are prohibited by the articles or bylaws, a ~~resolution~~
22 ~~approved by the affirmative vote of a majority of the directors present~~ corporation
23 may provide that some or all of any or all classes and series of the corporation's
24 shares will be uncertificated shares.
- 25 a. ~~The resolution~~ action by the corporation provided in this subsection does not
26 apply to shares represented by a certificate until the certificate is surrendered
27 to the corporation.
- 28 b. Within a reasonable time after the issuance or transfer of uncertificated
29 shares, the corporation shall send to the new shareholder the information
30 required by this section to be stated on certificates.

- 1 c. The information required under this section is not required to be sent to the
2 new shareholder by a publicly held corporation that adopted a system of
3 issuance, recordation, and transfer of the corporation's shares by electronic or
4 other means not involving the issuance of certificates if the system complies
5 with federal law.
- 6 d. Except as otherwise expressly provided by statute, the rights and obligations
7 of the holders of certificated and uncertificated shares of the same class and
8 series are identical.

9 **SECTION 15. AMENDMENT.** Section 10-19.1-69 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-19.1-69. Liability of subscribers and shareholders with respect to shares.**

- 12 1. A holder of or subscriber for shares of a corporation is under no obligation to the
13 corporation or its creditors with respect to such shares other than the obligation to
14 pay to the corporation the full consideration of which such shares were issued or to
15 be issued. As such, a shareholder is not personally liable for the acts or debts of
16 the corporation.
- 17 2. Any person becoming an assignee or transferee of shares or of a subscription for
18 shares in good faith and without knowledge or notice that the full consideration
19 therefore has not been paid shall not be personally liable to the corporation or its
20 creditors for any unpaid portion of such consideration.
- 21 3. A personal representative, conservator, guardian, trustee, assignee for the benefit
22 of creditors, or a receiver is not personally liable to the corporation as a holder of
23 or subscriber for shares of a corporation but the estate and funds in said person's
24 hands are liable.
- 25 4. No pledgee or other holder of shares as collateral security is personally liable as a
26 shareholder.

27 **SECTION 16.** Section 10-19.1-74.1 of the North Dakota Century Code is created and
28 enacted as follows:

29 **10-19.1-74.1. Contractual requirement to submit matter to shareholders.** A
30 corporation may agree to submit a matter to its shareholders whether or not the board

1 determines, at any time after approving the matter, that the matter is no longer advisable and
2 recommends that the shareholders reject it.

3 **SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. If the articles so provide, any action may be taken by written action signed, or
6 consented to by authenticated electronic communication, by the shareholders who
7 own voting power equal to the voting power that would be required to take the
8 same action at a meeting of the shareholders at which all shareholders were
9 present. However, in no event may written action be taken by holders of less than
10 a majority of the voting power of all shares entitled to vote on that action.

11 a. After the adoption of the initial articles, an amendment to the articles to permit
12 written action to be taken by less than all shareholders requires the approval
13 of all of the shareholders entitled to vote on the amendment.

14 b. When written action is permitted to be taken by less than all shareholders, all
15 shareholders must be notified of its text and effective date no later than five
16 days after the effective time of the action.

17 c. Failure to provide the notice does not invalidate the written action.

18 d. A shareholder who does not sign or consent to the written action has no
19 liability for the action or actions taken by the written actions.

20 **SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-76.1 of the North
21 Dakota Century Code is amended and reenacted as follows:

22 1. Shares of a corporation registered in the name of another domestic or foreign
23 corporation may be voted by the president or other legal representative of the
24 domestic or foreign corporation.

25 **SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 2. A corporation shall keep, at its principal executive office, or, if its principal
28 executive office is outside of this state, shall make available at its registered office
29 within ten days after receipt by an officer of the corporation of a written demand for
30 them made by a person described in subsection 4 or 5, originals or copies of:

31 a. Records of all proceedings of shareholders for the last three years;

- 1 b. Records of all proceedings of the board for the last three years;
- 2 c. Its articles and all amendments currently in effect;
- 3 d. Its bylaws and all amendments currently in effect;
- 4 e. Financial statements required by section 10-19.1-85 and the financial
5 statement for the most recent interim period prepared in the course of the
6 operation of the corporation for distribution to the shareholders or to a
7 governmental agency as a matter of public record;
- 8 f. Reports made to shareholders generally within the last three years;
- 9 g. A statement of the names and usual business addresses of its directors and
10 principal officers;
- 11 h. Voting trust agreements described in section 10-19.1-81;
- 12 i. Shareholder control agreements described in section 10-19.1-83; and
- 13 j. A copy of agreements, contracts, or other arrangements or portions of them
14 incorporated by reference under subsection ~~3 8~~ of section ~~10-19.1-61~~
15 10-19.1-10.

16 **SECTION 20. AMENDMENT.** Section 10-19.1-87 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **10-19.1-87. Rights of dissenting shareholders.**

- 19 1. A shareholder of a corporation may dissent from, and obtain payment for the fair
20 value of the shareholder's shares in the event of, any of the following corporate
21 actions:
 - 22 a. Unless otherwise provided in the articles, an amendment of the articles that
23 materially and adversely affects the rights or preferences of the shares of a
24 dissenting shareholder in that it:
 - 25 (1) Alters or abolishes a preferential right of the shares;
 - 26 (2) Creates, alters, or abolishes a right in respect of the redemption of the
27 shares, including a provision respecting a sinking fund for the
28 redemption or repurchase of shares;
 - 29 (3) Alters or abolishes a preemptive right of the holder of the shares to
30 acquire shares, securities other than shares, or rights to purchase
31 shares or securities other than shares;

- 1 (4) Excludes or limits the right of a shareholder to vote on a matter, or to
2 accumulate votes, except as the right may be excluded or limited
3 through the authorization or issuance of securities of an existing or new
4 class or series with similar or different voting rights; or
5 (5) Eliminates the right to obtain payment under this subdivision;
- 6 b. A sale, lease, transfer, or other disposition of property and assets of the
7 corporation that requires shareholder approval under subsection 2 of section
8 10-19.1-104, but not including:
- 9 (1) A disposition in dissolution described in subsection 2 of section
10 10-19.1-109;
- 11 (2) A disposition pursuant to an order of a court; or
12 (3) A disposition for cash on terms requiring that all or substantially all of
13 the net proceeds of disposition be distributed to the shareholders in
14 accordance with their respective interests within one year after the date
15 of disposition;
- 16 c. A plan of merger to which the corporation is a constituent organization, except
17 as provided in subsection 3 and except for a plan of merger adopted under
18 section 10-19.1-100.1;
- 19 d. A plan of exchange, whether under this chapter or under ~~chapter 10-32~~ its
20 governing statute in the case of another organization, to which the corporation
21 is a constituent organization as the corporation whose shares will be acquired
22 by the acquiring ~~corporation~~ organization, except as provided in subsection 3;
- 23 e. A plan of conversion adopted by a corporation; or
24 f. Any other corporate action taken pursuant to a shareholder vote with respect
25 to which the articles, the bylaws, or a resolution approved by the board directs
26 that dissenting shareholders may obtain payment for their shares.
- 27 2. A shareholder may not assert dissenters' rights as to less than all of the shares
28 registered in the name of the shareholder, unless the shareholder dissents with
29 respect to all the shares that are beneficially owned by another person but
30 registered in the name of the shareholder and discloses the name and address of
31 each beneficial owner on whose behalf the shareholder dissents. In that event, the

- 1 rights of the dissenter must be determined as if the shares as to which the
2 shareholder has dissented and the other shares were registered in the names of
3 different shareholders. The beneficial owner of shares who is not the shareholder
4 may assert dissenters' rights with respect to shares held on behalf of the beneficial
5 owner, and must be treated as a dissenting shareholder under the terms of this
6 section and section 10-19.1-88, if the beneficial owner submits to the corporation
7 at the time of or before the assertion of the rights a written consent of the
8 shareholder.
- 9 3. Unless the articles, the bylaws, or a resolution approved by the board otherwise
10 provide, the right to obtain payment under this section does not apply to the
11 shareholders of:
- 12 a. The surviving corporation in a merger with respect to shares of the
13 shareholders that are not entitled to be voted on the merger and are not
14 canceled or exchanged in the merger; or
- 15 b. The corporation whose shares will be acquired by the acquiring ~~corporation~~
16 organization in a plan of exchange with respect to shares of the shareholders
17 that are not entitled to be voted on the plan of exchange and are not
18 exchanged in the plan of exchange.
- 19 4. The shareholders of a corporation who have a right under this section to obtain
20 payment for their shares, or who would have the right to obtain payment for their
21 shares absent the exception set for in subsection 6. do not have a right at law or in
22 equity to have a corporate action described in subsection 1 set aside or rescinded,
23 except when the corporate action is fraudulent with regard to the complaining
24 shareholder or the corporation.
- 25 5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the
26 determination of shareholders entitled to receive notice of and to vote on an action
27 described under subsection 1, only shareholders as of the date fixed and beneficial
28 owners as of the date fixed who hold through shareholders, as provided in
29 subsection 2, may exercise dissenters' rights.

- 1 6. Notwithstanding subsection 1, the right to obtain payment under this section, other
2 than in connection with a plan of merger adopted under section 10-19.1-100, is
3 limited in accordance with the following provisions:
- 4 a. The right to obtain payment under this section is not available for the holders
5 of shares of any class or series of shares that is listed on the New York stock
6 exchange or the American stock exchange or designated as a national
7 market ~~system~~ security on ~~an interdealer quotation system by the national~~
8 ~~association of securities dealers, incorporated~~ the nasdaq stock market.
- 9 b. The applicability of subdivision a is determined as of:
- 10 (1) The record date fixed to determine the shareholders entitled to receive
11 notice of, and to vote at, the meeting of shareholders to act upon the
12 corporate action described in subsection 1; or
- 13 (2) The day before the effective date of corporate action described in
14 subsection 1 if there is no meeting of shareholders.
- 15 c. Subdivision a is not applicable, and the right to obtain payment under this
16 section is available pursuant to subsection 1, for the holders of any class or
17 series of shares who are required by the terms of the corporate action
18 described in subsection 1 to accept for such shares anything other than
19 shares, or cash in lieu of fractional shares, of any class or any series of
20 shares of the domestic or foreign corporation, or any other ~~proprietary~~
21 ownership interest of any other ~~entity~~ organization, that satisfies the
22 standards set forth in subdivision a at the time the corporate action becomes
23 effective.

24 **SECTION 21. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. A corporation may acquire its own shares, subject to section 10-19.1-92.
- 27 a. If a corporation acquires its own shares, then any of the acquired shares that
28 are not pledged by the corporation as security for the future payment of some
29 or all of the purchase price for the shares constitute authorized but unissued
30 shares of the corporation, unless the articles provide that they may not be

- 1 reissued. If the articles prohibit reissue, the number of authorized shares is
2 reduced by the number of shares acquired.
- 3 b. If a corporation pledges acquired shares as security for future payment of all
4 or part of the purchase price for the shares and reissues the pledged shares
5 in its own name, then:
- 6 (1) The shares must continue to be issued and outstanding except for
7 voting and determination of a quorum, and the shares are not
8 considered to be present and entitled to vote at any meeting of
9 shareholders;
- 10 (2) The corporation may not vote or exercise any other rights of a
11 shareholder with respect to the pledged shares, but the pledgee shall
12 have any rights, other than the right to vote, with respect to the shares
13 which the pledgee is entitled to by contract;
- 14 (3) If the pledge is foreclosed, the corporation shall reissue and deliver the
15 pledged shares to or at the direction of the pledgee; and
- 16 (4) Shares that are released from a pledge have the status specified in
17 subdivision a.

18 **SECTION 22. AMENDMENT.** Section 10-19.1-96 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-19.1-96. Merger - Exchange - Transfer.**

- 21 1. With or without a business purpose, a corporation may merge with:
- 22 a. ~~Another domestic corporation under a plan of merger approved in the manner~~
23 ~~provided in sections 10-19.1-97 through 10-19.1-103.~~
- 24 b. ~~A limited liability company under a plan of merger approved in the manner~~
25 ~~provided in sections 10-32-101 through 10-32-106.~~
- 26 e. ~~A foreign corporation or foreign limited liability company under a plan of~~
27 ~~merger in the manner provided in section 10-19.1-103~~ another domestic or
28 foreign organization under a plan of merger approved in the manner provided
29 in this section and in sections 10-19.1-97 through 10-19.1-103 and in the
30 manner provided in the governing statute of the other organization.
- 31 2. With respect to an exchange:

- 1 a. A corporation may acquire all the ownership interests of one or more classes
2 or series of another domestic ~~corporation~~ or foreign organization under a plan
3 of exchange approved in the manner provided in this section and in sections
4 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in
5 the manner provided in the governing statute in the case of any other
6 organization.
- 7 b. ~~A corporation may acquire all the ownership interests of one or more classes~~
8 ~~or series of a limited liability company under a plan of exchange approved in~~
9 ~~the manner provided in sections 10-32-101 through 10-32-106.~~
- 10 e. ~~A limited liability company~~ Another domestic or foreign organization may
11 acquire all the ~~ownership interests~~ shares of one or more classes or series of
12 a corporation under a plan of exchange approved in the manner provided in
13 this section and in sections 10-19.1-97 through 10-19.1-103 and chapter
14 10-32 in the case of a domestic corporation and in the manner provided in the
15 governing statute in the case of any other organization.
- 16 d. ~~A foreign corporation or foreign limited liability company may acquire all the~~
17 ~~ownership interests of one or more classes or series of a corporation under a~~
18 ~~plan of exchange approved in the manner provided in section 10-19.1-103.~~
- 19 3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially
20 all of the corporation's property and assets in the manner provided in section
21 10-19.1-104.
- 22 4. A corporation may participate in a merger or exchange ~~with a limited liability~~
23 ~~company~~ only as permitted by this section and by sections 10-19.1-97 through
24 10-19.1-103. The dissenter's rights for shareholders of a corporation are governed
25 by this chapter.

26 **SECTION 23. AMENDMENT.** Section 10-19.1-97 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **10-19.1-97. Plan of merger or exchange.**

- 29 1. A plan of merger or exchange must contain:
- 30 a. The name of the corporation and of each other constituent organization
31 proposing to merge or participate in an exchange and:

- 1 (1) In the case of a merger, the name of the surviving organization; or
2 (2) In the case of an exchange, the name of the acquiring organization;
3 b. The terms and conditions of the proposed merger or exchange;
4 c. The manner and basis for converting or exchanging ownership interests:
5 (1) In the case of a merger, the manner and basis of converting the
6 ownership interests of the constituent organizations into securities of
7 the surviving organization or of any other organization or, in whole or in
8 part, into money or other property; or
9 (2) In the case of an exchange, the manner and basis of exchanging the
10 ownership interests to be acquired for securities of the acquiring
11 organization or any other organization or, in whole or in part, into
12 money or other property;
13 d. In the case of a merger, a statement of any amendments to the ~~articles of~~
14 ~~incorporation or articles of organization~~ originating records of the surviving
15 organization proposed as part of the merger; and
16 e. Any other provisions with respect to the proposed merger or exchange which
17 are deemed necessary or desirable.
- 18 2. This section does not limit the power of a corporation to acquire all or part of the
19 ownership interests of one or more classes or series of ~~another~~ any other
20 organization through a negotiated agreement with the owners or otherwise.

21 **SECTION 24. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **10-19.1-98. Plan approval.**

- 24 1. A resolution containing the plan of merger or exchange must be approved by the
25 governing ~~board~~ body as required by section 10-19.1-46 in the case of a domestic
26 corporation, or ~~40-32-83~~ by the governing statute of each other constituent
27 organization and must then be submitted at a regular or special meeting to the
28 owners of each constituent organization, in the case of a plan of merger or the
29 constituent organization whose ownership interests will be acquired by the
30 acquiring constituent organization in the exchange, in the case of a plan of
31 exchange. ~~The plan of merger or exchange may require that it be submitted to the~~

- 1 ~~shareholders whether or not the board determines at any time after the board's~~
2 ~~initial approval of the plan that the plan is no longer advisable and recommends~~
3 ~~that the shareholders reject it.~~ If owners owning any class or series of ownership
4 interests in a constituent organization are entitled to vote on the plan of merger or
5 exchange under this subsection, then written notice must be given to every owner
6 of that constituent organization, whether or not entitled to vote at the meeting, not
7 less than fourteen days nor more than sixty days before the meeting, in the
8 manner provided in section 10-19.1-73 for notice of meetings of shareholders in
9 the case of a domestic corporation ~~and, or~~ in the manner provided in section
10 ~~10-32-40 in the case of a limited liability company~~ its governing statute in the case
11 of each other constituent organization. The written notice must state that a
12 purpose of the meeting is to consider the proposed plan of merger or exchange. A
13 copy or short description of the plan of merger or exchange must be included in or
14 enclosed with the notice.
- 15 2. At the meeting a vote of the owners must be taken on the proposed plan. The plan
16 of merger or exchange is adopted when approved by the affirmative vote of the
17 holders of a majority of the voting power of all ownership interests entitled to vote.
18 Except as provided in subsection 3, a class or series of ~~shares~~ ownership interests
19 of the ~~corporation~~ constituent organization is entitled to vote as a class or series if
20 any provision of the plan would, if contained in a proposed amendment to the
21 articles of incorporation, or a member-control agreement, entitle the class or series
22 of ownership interests to vote as a class or series and, in the case of an exchange,
23 if the class or series is included in the exchange.
- 24 3. A class or series of ownership interests of the constituent organization is not
25 entitled to vote as a class or series ~~solely because the plan of merger or exchange~~
26 ~~affects a cancellation or exchange of ownership interests of the class or series~~ if
27 the plan of merger or exchange affects a cancellation or exchange of all ownership
28 interests of the constituent organization of all classes and series that are
29 outstanding immediately before the merger or exchange and owners of ownership
30 interests of that class or series are entitled to obtain payment for the fair value of
31 their ownership interests under section 10-19.1-87, or would have the right to

- 1 obtain payment for their ownership interests absent the exception set forth in
2 subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or
3 ~~10-32-54~~ under its governing statute in the case of any other organization in the
4 event of the merger or exchange.
- 5 4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange
6 to a vote at a meeting of owners of a surviving constituent organization is not
7 required if:
- 8 a. The articles will not be amended in the transaction;
- 9 b. Each owner of ownership interests in the constituent organization which were
10 outstanding immediately before the effective date of the transaction will hold
11 the same number of ownership interests with identical rights immediately after
12 the effective date;
- 13 c. The voting power of the outstanding ownership interests of the constituent
14 organization entitled to vote immediately after the merger or exchange, plus
15 the voting power of the ownership interests of the constituent organization
16 entitled to vote issuable on conversion of, or on the exercise of rights to
17 purchase, securities issued in the transaction, will not exceed by more than
18 twenty percent the voting power of the outstanding ownership interests of the
19 constituent organization entitled to vote immediately before the transaction;
20 and
- 21 d. The number of participating ownership interests of the constituent
22 organization immediately after the merger, plus the number of participating
23 ownership interests of the constituent organization issuable on conversion of,
24 or on the exercise of rights to purchase, securities issued in the merger, will
25 not exceed by more than twenty percent the number of participating
26 ownership interests of the constituent organization immediately before the
27 merger. "Participating ownership interests" are outstanding ownership
28 interests of the constituent organization which entitle their owners to
29 participate without limitation in distributions by the constituent organization.
- 30 5. If the merger or exchange is with an organization other than a domestic limited
31 ~~liability company~~ corporation, the plan of merger or exchange must also be

1 approved in the manner provided in ~~chapter 10-32~~ the governing statute of the
2 other organization.

3 **SECTION 25. AMENDMENT.** Subsection 1 of section 10-19.1-99 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. Upon receiving the approval required by section 10-19.1-98, articles of merger
6 must be prepared which contain:

- 7 a. The plan of merger; and
8 b. A statement that the plan is approved by each constituent organization under
9 this chapter ~~10-19.4~~ or ~~10-32~~ under its governing statute in the case of any
10 other organization.

11 **SECTION 26. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code
12 is amended and reenacted as follows:

13 **10-19.1-100. Merger of subsidiary into parent.**

14 1. A If either the parent or the subsidiary is a domestic organization, then a parent
15 that is a domestic or foreign organization owning at least ninety percent of the
16 outstanding ownership interests of each class and series of a subsidiary that is a
17 domestic or foreign organization directly, or indirectly through related organizations
18 other than classes or series that, absent this section, would otherwise not be
19 entitled to vote on the merger:

20 a. May merge the subsidiary into the parent or into any other subsidiary at least
21 ninety percent of the outstanding ownership interests of each class and series
22 of which is owned by the parent directly, or indirectly through related
23 organizations other than classes or series that, absent this section, would
24 otherwise not be entitled to vote on the merger, without a vote of the owners
25 of the parent or any subsidiary; or

26 b. May merge the parent, or the parent and one or more subsidiaries into one of
27 the subsidiaries under this section.

28 2. A resolution approved by the present directors of the parent as required by section
29 10-19.1-46 in the case of a domestic corporation or ~~of the present governors of the~~
30 ~~parent required by section 10-32-83~~ by the present members of the governing

- 1 body of the parent as required by its governing statute in the case of any other
2 organization must set forth a plan of merger that contains:
- 3 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
4 name of the surviving constituent organization;
- 5 b. The manner and basis of converting the ownership interests of the subsidiary
6 or subsidiaries or the parent into securities or ownership interests of the
7 parent, of the subsidiary, or of another organization; or, in whole or in part,
8 into money or other property;
- 9 c. If the parent is a constituent organization but is not the surviving constituent
10 organization in the merger, a provision for the pro rata issuance of ownership
11 interests of the surviving constituent organization to the owners of ownership
12 interests of the parent on surrender of any ownership interests of the parent;
13 and
- 14 d. If the surviving constituent organization is a subsidiary, a statement of any
15 amendments to the articles of the surviving constituent organization that will
16 be part of the merger.
- 17 3. # Notwithstanding subsection 1:
- 18 a. If the parent is a domestic corporation and the conditions of subsection 4 of
19 section 10-19.1-98 are not met with respect to the parent, then the resolution
20 is not effective unless it is approved by the affirmative vote of the holders of a
21 majority of the voting power of all shares of the parent entitled to vote at a
22 regular or special meeting held in accordance with section 10-19.1-98; and
- 23 b. If the parent is a domestic or foreign organization and is not the surviving
24 organization in the merger, then the resolution is not effective unless it is also
25 approved in the manner provided in the governing statute of the parent.
- 26 4. Notwithstanding subsection 3, if the parent is a constituent organization and is the
27 surviving organization in the merger, it may change its corporate name, without a
28 vote of its owners, by the inclusion of a provision to that effect in the resolution of
29 merger setting forth the plan of merger that is approved by the affirmative vote of a
30 majority of the board members of the parent present. Upon the effective date of
31 the merger, the name of the parent must be changed.

- 1 4. ~~If the parent is a constituent organization but is not the surviving constituent~~
2 ~~organization in a merger, the resolution is not effective unless the resolution is also~~
3 ~~approved by the affirmative vote of the holders of a majority of the voting power of~~
4 ~~all ownership interests of the parent entitled to vote at a regular or special meeting~~
5 ~~held in accordance with section 10-19.1-98 if the parent is a domestic corporation,~~
6 ~~section 10-32-102 if the parent is a limited liability company, or in accordance with~~
7 ~~the laws of the jurisdiction under which the parent is incorporated or organized if~~
8 ~~the parent is a foreign corporation or foreign limited liability company.~~
- 9 5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action,
10 including a copy of the plan of merger must be given to each owner, other than the
11 parent and any subsidiary, of each subsidiary that is a constituent organization in
12 the merger before, or within ten days after, the effective date of the merger.
- 13 6. Articles of merger must be prepared which contain:
- 14 a. The plan of merger;
- 15 b. The number of outstanding ownership interests of each class and series of
16 the subsidiary that is a constituent organization in the merger, other than the
17 classes or series that, absent this section, would otherwise not be entitled to
18 vote on the merger, and the number of ownership interests of each class and
19 series owned, other than the classes or series that, absent this section, would
20 otherwise not be entitled to vote on the merger, by the parent directly, or
21 indirectly through related constituent organizations; and
- 22 c. A statement that the plan of merger is approved by the parent under this
23 section.
- 24 7. The articles of merger must be signed on behalf of the parent and filed with the
25 secretary of state, with the fees provided in section 10-19.1-147.
- 26 8. The secretary of state shall issue a certificate of merger to the surviving constituent
27 organization or the legal representative of the surviving constituent organization's
28 ~~legal representative organization~~. The certificate must contain the effective date of
29 the merger.
- 30 9. If all of the ownership interests of one or more domestic subsidiaries that is a
31 constituent organization to a merger under this section are not owned by the

1 parent directly, or indirectly through related constituent organizations, immediately
2 before the merger, then the owners of each domestic subsidiary which is either a
3 limited liability company or a corporation, have dissenter's rights under section
4 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or
5 subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.

6 a. If the parent is a constituent organization but is not the surviving organization
7 in the merger, the articles of incorporation or articles of organization of the
8 surviving organization immediately after the merger differ from the articles of
9 incorporation or articles of organization of the parent immediately before the
10 merger in a manner that would entitle an owner of the parent to dissenter's
11 rights under subdivision a of subsection 1 of section 10-19.1-87 or under
12 subdivision a of subsection 1 of section 10-32-54, and the articles of
13 incorporation or articles of organization of the surviving constituent
14 organization constitute an amendment to the articles of incorporation or
15 articles of organization of the parent, then that owner of the parent has
16 dissenter's rights as provided under section 10-19.1-87 or 10-32-54.

17 b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do
18 not apply to any merger affected under this section.

- 19 10. A merger among a parent and one or more subsidiaries or among two or more
20 subsidiaries of a parent may be accomplished under sections 10-19.1-97 through
21 10-19.1-99 instead of this section, in which case this section does not apply.

22 **SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-100.1 of the North
23 Dakota Century Code is amended and reenacted as follows:

- 24 1. For purposes of this section:

25 a. "Holding company" means the corporation that is or becomes the direct
26 parent of the surviving corporation of a merger accomplished under this
27 section.

28 b. "Parent constituent corporation" means the parent corporation that merges
29 with or into the subsidiary constituent corporation.

30 c. "Subsidiary constituent corporation" means the subsidiary corporation that the
31 parent constituent corporation merges with or into in the merger.

1 **SECTION 28. AMENDMENT.** Section 10-19.1-101 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **10-19.1-101. Abandonment of plan of merger or exchange.**

4 1. After a plan of merger or exchange is approved by the owners entitled to vote on
5 the approval of the plan as provided in section 10-19.1-98 and before the effective
6 date of the plan, the plan may be abandoned:

7 a. With respect to the approval of the abandonment:

8 (1) If the owners of the ownership interests of each of the constituent
9 organizations entitled to vote on the approval of the plan as provided in
10 section 10-19.1-98 have approved the abandonment at a meeting by
11 the affirmative vote of the owners of a majority of the voting power of
12 the ownership interests entitled to vote;

13 (2) If the owners of a constituent organization are not entitled to vote on
14 the approval of the plan under section 10-19.1-98, the governing ~~board~~
15 body of the constituent organization has approved the abandonment by
16 the affirmative vote required by section 10-19.1-46 ~~or 10-32-83~~ in the
17 case of a domestic corporation or by its governing statute in the case of
18 any other organization; and

19 (3) If the merger or exchange is with a foreign ~~corporation or limited liability~~
20 ~~company~~ organization, then if abandonment is approved in the manner
21 as may be required by the ~~laws of the jurisdiction under which the~~
22 ~~corporation is incorporated or the limited liability company is organized~~
23 governing statute of the foreign organization;

24 b. If the plan itself provides for abandonment and all conditions for abandonment
25 set forth in the plan are met; or

26 c. Pursuant to subsection 2.

27 2. If articles of merger are not filed with the secretary of state and the plan is to be
28 abandoned or if a plan of exchange is to be abandoned before the effective date of
29 the plan, then a resolution by the governing body of any constituent organization
30 abandoning the plan of merger or exchange may be approved by the affirmative
31 vote of the governing ~~board~~ body required by section 10-19.1-46 or 10-32-83 in

1 the case of a domestic corporation or by its governing statute in the case of any
2 other organization, subject to the contract rights of any other person under the
3 plan.

4 3. If articles of merger are filed with the secretary of state, but are not yet effective,
5 the constituent organizations, in the case of abandonment under paragraph 1 of
6 subdivision a of subsection 1, then the constituent organization or any one of them
7 under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent
8 organization in the case of abandonment under subsection 2, shall file with the
9 secretary of state, with the fees provided in section 10-19.1-147, articles of
10 abandonment that contain:

- 11 a. The names of the constituent organizations;
12 b. The provision of this section under which the plan is abandoned; and
13 c. The text of the resolution approved by the affirmative vote of a majority of the
14 directors present abandoning the plan.

15 4. If the certificate of merger is issued, then the ~~board~~ governing body shall surrender
16 the certificate to the secretary of state upon filing the articles of abandonment.

17 **SECTION 29. AMENDMENT.** Subsection 2 of section 10-19.1-102 of the North
18 Dakota Century Code is amended and reenacted as follows:

19 2. When a merger becomes effective:

- 20 a. The constituent organizations become a single entity, the surviving
21 ~~corporation or the surviving limited liability company, as the case may be~~
22 organization.
- 23 b. The separate existence of all constituent organizations except the surviving
24 organization ceases.
- 25 c. As to any corporation that was a constituent organization and is not the
26 surviving constituent organization, the articles of merger serve as articles of
27 termination, and unless previously filed, the notice of dissolution.
- 28 d. ~~As to rights, privileges, powers, duties, and liabilities:~~
- 29 (1) ~~If the surviving organization is a limited liability company, the~~ The
30 surviving ~~limited liability company~~ organization has all the rights,
31 privileges, immunities, and powers and is subject to all of the duties

- 1 and liabilities of ~~a domestic limited liability company~~ the specified
2 organization under its governing statute.
- 3 ~~(2) If the surviving organization is a corporation, the surviving corporation~~
4 ~~has all the rights, privileges, immunities, and powers and is subject to~~
5 ~~all the duties and liabilities of a corporation incorporated under this~~
6 ~~chapter.~~
- 7 e. The surviving organization possesses all the rights, privileges, immunities,
8 and franchises, of a public as well as of a private nature, of each of the
9 constituent organizations.
- 10 (1) All property and all debts due on any account, including subscriptions
11 to ~~shares~~ ownership interests and all other choses in action, and every
12 other interest of or belonging to or due to each of the constituent
13 organizations vests in the surviving organization without any further act
14 or deed.
- 15 (2) Confirmatory deeds, assignments, or similar instruments to accomplish
16 that vesting may be signed and delivered at any time in the name of a
17 constituent organization by the organization's current officers ~~or,~~
18 managers, or governing body, as the case may be, or, if the
19 organization no longer exists, by the ~~organization's~~ last officers ~~or,~~
20 managers, or governing body of the organization.
- 21 (3) The title to any real estate or any interest vested in any of the
22 constituent organizations does not revert nor in any way become
23 impaired by reason of the merger.
- 24 f. The surviving organization is responsible and liable for all the liabilities and
25 obligations of each of the constituent organizations.
- 26 (1) A claim of or against or a pending proceeding by or against a
27 constituent organization may be prosecuted as if the merger did not
28 take place, or the surviving organization may be substituted in the place
29 of the constituent organization.
- 30 (2) Neither the rights of creditors nor any liens upon the property of a
31 constituent organization are impaired by the merger.

- 1 g. The articles of ~~incorporation or articles of organization, as the case may be,~~ of
2 the surviving organization are deemed to be amended to the extent that
3 changes in its articles, if any, are contained in the plan of merger.

4 **SECTION 30. AMENDMENT.** Section 10-19.1-102.1 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 **10-19.1-102.1. Continuance of corporate authority.** When an act or record is
7 considered necessary or appropriate to evidence the vesting of property or other rights in the
8 single corporation, the persons with authority to do so under the articles ~~or~~, bylaws, or
9 member-control agreement of each constituent organization shall do the act or sign and deliver
10 the record and for this purpose, the existence of the constituent organizations and the authority
11 of those persons is continued.

12 **SECTION 31. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code
13 is amended and reenacted as follows:

14 **10-19.1-103. Merger or exchange with foreign ~~corporation or foreign limited~~**
15 **~~liability company organization.~~**

- 16 1. A domestic corporation may merge with, including a merger pursuant to section
17 10-19.1-100, or participate in an exchange with a foreign ~~corporation or foreign~~
18 ~~limited liability company~~ organization by following the procedures set forth in this
19 section, if:
- 20 a. With respect to a merger, the merger is permitted by ~~the laws of the~~
21 ~~jurisdiction under which the foreign corporation or foreign limited liability~~
22 ~~company is incorporated or organized~~ its governing statute.
- 23 b. With respect to an exchange, the constituent organization whose ownership
24 interests will be acquired is a domestic ~~corporation or limited liability company~~
25 organization, regardless of whether the exchange is permitted by ~~the laws of~~
26 ~~the jurisdiction under which the foreign corporation or foreign limited liability~~
27 ~~company is incorporated or organized~~ its governing statute.
- 28 2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96
29 through 10-19.1-103 with respect to the merger or exchange of ownership interests
30 and each foreign ~~corporation or foreign limited liability company~~ organization shall

- 1 comply with the applicable provisions of ~~the laws of the jurisdiction under which it~~
2 ~~was incorporated or organized or by which it is governed~~ its governing statute.
- 3 3. If the surviving organization in a merger will be a domestic corporation, then the
4 organization shall comply with this chapter.
- 5 4. If the surviving organization in a merger will be a foreign ~~corporation or foreign~~
6 ~~limited liability company~~ organization and will transact business in this state, then
7 the organization shall comply with the provisions of ~~this chapter with respect to~~
8 ~~foreign corporations or chapter 10-32 with respect to foreign limited liability~~
9 ~~companies~~ its governing statute. In every case, the surviving foreign ~~corporation~~
10 ~~or foreign limited liability company~~ organization shall file with the secretary of state:
- 11 a. An agreement that it may be served with process in this state in a proceeding
12 for the enforcement of an obligation of a constituent organization and in a
13 proceeding for the enforcement of the rights of a dissenting owner of an
14 ownership interest of a constituent organization against the surviving foreign
15 ~~corporation or foreign limited liability company~~ organization;
- 16 b. An irrevocable appointment of the secretary of state as the ~~organization's~~
17 agent of the organization to accept service of process in any proceeding, and
18 an address to which process may be forwarded; and
- 19 c. An agreement that the organization will promptly pay to the dissenting owners
20 of ownership interests of each domestic constituent ~~corporation and domestic~~
21 ~~constituent limited liability company~~ organization the amount, if any, to which
22 they are entitled under ~~section 10-19.1-88 or 10-32-55~~ its governing statute.

23 **SECTION 32. AMENDMENT.** Section 10-19.1-104 of the North Dakota Century Code
24 is amended and reenacted as follows:

25 **10-19.1-104. Transfer of assets - When permitted.**

- 26 1. A corporation, by affirmative vote of a majority of the directors present upon those
27 terms and conditions and for those considerations, which may be money,
28 securities, or other instruments for the payment of money or other property, as the
29 board deems expedient, and without shareholder approval, may:
- 30 a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its
31 property and assets in the usual and regular course of its business;

- 1 b. Grant a security interest in all or substantially all of its property and assets
2 whether or not in the usual and regular course of its business; or
- 3 c. Transfer any or all of its property to ~~a corporation~~ an organization all the
4 ~~shares~~ ownership interests of which are owned by the corporation.
- 5 2. With respect to shareholders' approval:
- 6 a. A corporation, by affirmative vote of a majority of the directors present, may
7 sell, lease, transfer, or otherwise dispose of all or substantially all of its
8 property and assets, including its good will, not in the usual and regular
9 course of its business, upon those terms and conditions and for those
10 considerations, which may be money, securities, or other instruments for the
11 payment of money or other property, as the board deems expedient, when
12 approved at a regular or special meeting of the shareholders by the
13 affirmative vote of the holders of a majority of the voting power of the shares
14 entitled to vote.
- 15 (1) Written notice of the meeting must be given to all shareholders whether
16 or not they are entitled to vote at the meeting.
- 17 (2) The written notice must state that a purpose of the meeting is to
18 consider the sale, lease, transfer, or other disposition of all or
19 substantially all of the property and assets of the corporation.
- 20 b. Shareholder approval is not required under subdivision a if, following the sale,
21 lease, transfer, or other disposition of its property and assets, the corporation
22 retains a significant continuing business activity. The corporation will
23 conclusively be deemed to have retained a significant continuing business
24 activity if the corporation retains a business activity that represented at least:
- 25 (1) Twenty-five percent of the corporation's total assets at the end of the
26 most recently completed fiscal year; and
- 27 (2) Twenty-five percent of either income from continuing operations before
28 taxes or revenues from continuing operations for that fiscal year,
29 measured on a consolidated basis with its subsidiaries for each of
30 paragraphs 1 and 2.

- 1 3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease,
2 transfer, or other disposition may be signed and delivered at any time in the name
3 of the transferor by its current officers or, if the corporation no longer exists, by its
4 last officers.
- 5 4. The transferee is liable for the debts, obligations, and liabilities of the transferor
6 only to the extent provided in the contract or agreement between the transferee
7 and the transferor or to the extent provided by this chapter or other statutes of this
8 state. A disposition of all or substantially all of the property and assets of the
9 corporation under this section is not considered to be a merger or a de facto
10 merger pursuant to this chapter or otherwise. The transferee shall not be liable
11 solely because it is deemed to be a continuation of the transferor.

12 **SECTION 33. AMENDMENT.** Subsection 2 of section 10-19.1-104.1 of the North
13 Dakota Century Code is amended and reenacted as follows:

- 14 2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the
15 context otherwise requires:
- 16 a. "Act of the board" means action by the board as provided in section
17 10-19.1-46 whether:
- 18 (1) At a meeting of the board as provided in section 10-19.1-43; or
19 (2) By a written action of the board as provided in section 10-19.1-47.
- 20 b. "Act of the governing body" means action by the governing body of any
21 organization, other than a domestic corporation, in the manner provided in the
22 governing statute.
- 23 c. "Act of the owners" means action by the owners of an organization, other than
24 a domestic corporation, in the manner provided in its governing statute.
- 25 d. "Act of the shareholders" means action by the shareholders as provided in
26 section 10-19.1-74 whether:
- 27 (1) At a meeting of the shareholders as provided in sections 10-19.1-71
28 and 10-19.1-72; or
29 (2) By a written action of the shareholders as provided in section
30 10-19.1-75.
- 31 e. "Certificate of creation" means:

- 1 (1) A certificate of incorporation, if the converted organization is a
- 2 corporation deemed to be incorporated under this chapter;
- 3 (2) A certificate of organization, if the converted organization is a limited
- 4 liability company deemed to be organized under chapter 10-32;
- 5 (3) A certificate of limited partnership, if the converted organization is a
- 6 limited partnership deemed to be formed under chapter 45-10.2;
- 7 (4) The filed registration of a limited liability partnership, if the converted
- 8 organization is a limited liability partnership deemed to be established
- 9 under chapter 45-22; or
- 10 (5) A certificate of limited liability limited partnership, if the converted
- 11 organization is a limited liability limited partnership deemed to be
- 12 formed under chapter 45-23.

13 e. f. "Date of origin" means the date on which:

- 14 (1) A corporation which is:
 - 15 (a) The converting organization was incorporated; or
 - 16 (b) The converted organization is deemed to be incorporated;
- 17 (2) A limited liability company which is:
 - 18 (a) The converting organization was organized; or
 - 19 (b) The converted organization is deemed to be organized;
- 20 (3) A general partnership that is the converting organization was formed;
- 21 (4) A limited partnership which is:
 - 22 (a) The converting organization was formed; or
 - 23 (b) The converted organization is deemed to be formed;
- 24 (5) A limited liability partnership which is:
 - 25 (a) The converting organization was formed; or
 - 26 (b) The converted organization is deemed to be formed; and
- 27 (6) A limited liability limited partnership which is:
 - 28 (a) The converting organization was formed; or
 - 29 (b) The converted organization is deemed to be formed.

30 e. g. "Filed registration" means the registration of a limited liability partnership
31 which has been filed with the secretary of state.

1 f. h. "General partnership" means an organization formed under chapters 45-13
2 through 45-21.

3 ~~g.~~ i. "Organizational records" means for an organization which is:
4 (1) A corporation, its articles of incorporation and bylaws;
5 (2) A limited liability company, its articles of organization, operating
6 agreement or bylaws, and any member-control agreement;
7 (3) A limited partnership, its partnership agreement;
8 (4) A limited liability partnership, its partnership agreement; or
9 (5) A limited liability limited partnership, its partnership agreement.

10 ~~h.~~ "~~Originating records" means for an organization which is:~~
11 ~~(1) A corporation, its articles of incorporation;~~
12 ~~(2) A limited liability company, its articles of organization;~~
13 ~~(3) A limited partnership, its certificate of limited partnership;~~
14 ~~(4) A limited liability partnership, its registration; or~~
15 ~~(5) A limited liability limited partnership, its certificate of limited liability~~
16 ~~limited partnership.~~

17 **SECTION 34. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North
18 Dakota Century Code is amended and reenacted as follows:

- 19 1. If notice to creditors and claimants is given, it must be given by:
20 a. Publishing the notice once each week for four successive weeks in an official
21 newspaper, as defined in chapter 46-06, in the county or counties where the
22 registered office and the principal executive office of the corporation are
23 located; and
24 b. Giving written notice to known creditors and claimants pursuant to
25 subsection ~~35~~ 36 of section 10-19.1-01.

26 **SECTION 35.** Section 10-19.1-139.1 of the North Dakota Century Code is created and
27 enacted as follows:

28 **10-19.1-139.1. Foreign corporation - Conversion of foreign corporation**
29 **authorized to transact business in this state.** If a foreign corporation authorized to transact
30 business in this state converts to another organization permitted by its governing statute, within
31 thirty days after the conversion becomes effective, the newly created organization resulting

1 from the conversion shall file with the secretary of state a certified statement of conversion duly
2 authenticated by the proper officer of the jurisdiction in which the statutory conversion was
3 effected. Any foreign organization that is the converted organization in a conversion and which
4 will continue to transact business in this state shall obtain a certificate of authority or applicable
5 registration in accordance with the North Dakota governing statute applicable to the converted
6 organization.

7 **SECTION 36. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **10-19.1-146. Secretary of state - Annual report of corporations and foreign**
10 **corporations - Involuntary dissolution - Revocation of certificate of authority.**

- 11 1. Each corporation and each foreign corporation authorized to transact business in
12 this state shall file, within the time provided in subsection 3, an annual report
13 setting forth:
- 14 a. The name of the corporation or foreign corporation and the state or country
15 under the laws of which the corporation or foreign corporation is incorporated.
 - 16 b. The address of the registered office of the corporation or foreign corporation
17 in this state, the name of the corporation's or foreign corporation's registered
18 agent in this state at that address, and the address of the corporation's or
19 foreign corporation's principal executive office.
 - 20 c. A brief statement of the character of the business in which the corporation or
21 foreign corporation is actually engaged in this state.
 - 22 d. The names and respective addresses of the officers and directors of the
23 corporation or foreign corporation.
 - 24 e. ~~A~~ In the case of a domestic or foreign corporation, a statement of the
25 aggregate number of shares the corporation or foreign corporation has
26 authority to issue, itemized by classes, par value of shares, shares without
27 par value, and series, if any, within a class.
 - 28 f. ~~A~~ In the case of a domestic or foreign corporation, a statement of the
29 aggregate number of issued shares, itemized by classes, par value of shares,
30 shares without par value, and series, if any, within a class.

- 1 g. ~~A statement, expressed in dollars, of the value of all the property owned by~~
2 ~~the corporation, wherever located, and the value of the property of the~~
3 ~~corporation located within this state, and a statement, expressed in dollars, of~~
4 ~~the total gross income of the corporation for the twelve months ending on~~
5 ~~December thirty first preceding the date provided under this section for the~~
6 ~~filing of the annual report and the gross amount accumulated by the~~
7 ~~corporation at or from places of business in this state. If, on December~~
8 ~~thirty first preceding the time provided under this section for the filing of the~~
9 ~~report, the corporation had not been in existence for a period of twelve~~
10 ~~months, or, in the case of a foreign corporation, had not been authorized to~~
11 ~~transact business in this state for a period of twelve months, the statement~~
12 ~~with respect to total gross income must be furnished for the period between~~
13 ~~the date of incorporation or the date of the corporation's authorization to~~
14 ~~transact business in this state and December thirty first.~~
- 15 h. ~~Any additional information necessary or appropriate to enable the secretary of~~
16 ~~state to determine and assess the proper amount of fees payable by the~~
17 ~~corporation.~~
- 18 2. The annual report must be submitted on forms prescribed by the secretary of state.
19 The information provided must be given as of the date of the execution of the
20 report ~~except as to the information required by subdivision g of subsection 1 which~~
21 ~~must be given as of the close of business on December thirty first next preceding~~
22 ~~the date herein provided for the filing of the report, or, in the alternative, data of the~~
23 ~~fiscal year ending next preceding this report may be used.~~ The annual report must
24 be signed as provided in subsection 54 52 of section 10-19.1-01, or the articles or
25 the bylaws or a resolution approved by the affirmative vote of the required
26 proportion or number of the directors or holders of shares entitled to vote. If the
27 corporation or foreign corporation is in the hands of a receiver or trustee, it must be
28 signed on behalf of the corporation or foreign corporation by the receiver or
29 trustee. The secretary of state may destroy all annual reports provided for in this
30 section after they have been on file for six years. ~~The secretary of state, or any~~
31 ~~employee or legal representative of the secretary of state, may not disclose the~~

1 ~~information reported under subdivision g of subsection 1 to any person, except a~~
2 ~~person that is verified to be a shareholder of the corporation or foreign corporation,~~
3 ~~a legal representative of the shareholder for which information is requested, or to~~
4 ~~the tax commissioner or any employee or legal representative of the tax~~
5 ~~commissioner, who may not disclose the information and may use the information~~
6 ~~only for the administration of the tax laws.~~

7 3. Except for the first annual report, the annual report must be delivered to the
8 secretary of state:

- 9 a. By a corporation, before August second of each year; and
10 b. By a foreign corporation, before May sixteenth of each year.

11 The first annual report of either a corporation or foreign corporation must be
12 delivered before the date provided in the year following the calendar year in which
13 the certificate of incorporation or certificate of authority was issued by the secretary
14 of state, or in the case of a corporation, in the year following the calendar year of
15 the effective date stated in the articles of incorporation. An annual report in a
16 sealed envelope postmarked by the United States postal service before the date
17 provided in this subsection, or an annual report in a sealed packet with a verified
18 shipment date by any other carrier service before the date provided in this
19 subsection, is compliance with this requirement. When the filing date falls on
20 Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or
21 verified shipment date on the next business day is compliance with this
22 requirement.

23 4. The secretary of state must file the annual report if the annual report conforms to
24 the requirements of this section and all fees have been paid as provided in section
25 10-19.1-147.

- 26 a. If the annual report does not conform, it must be returned to the corporation
27 or foreign corporation for any necessary correction or payment.
28 b. If the annual report is corrected and filed before the date provided in
29 subsection 3, or within thirty days after the annual report was returned by the
30 secretary of state for correction, then the penalties provided in section

1 10-19.1-147 for the failure to file an annual report within the time provided do
2 not apply.

3 5. The secretary of state may extend the annual report filing date provided in
4 subsection 3 if a written application for an extension is delivered before the date
5 provided in subsection 3. A corporation or foreign corporation ~~with a fiscal year~~
6 ~~ending within three months before the date provided in subsection 3~~ may make a
7 written request for an extension; to apply to reports for subsequent years ~~until the~~
8 ~~fiscal year is changed.~~

9 6. Three months after the date provided in subsection 3, any corporation or foreign
10 corporation failing to file its annual report is not in good standing. After the
11 corporation or foreign corporation becomes not in good standing, the secretary of
12 state shall notify the corporation or foreign corporation that its certificate of
13 incorporation or certificate of authority is not in good standing and that it may be
14 dissolved or revoked as provided in subsection 7 or 8.

15 a. The secretary of state must mail the notice of impending dissolution or
16 revocation to the last registered agent at the last registered office of record.

17 b. If the corporation or foreign corporation files its annual report after the notice
18 is mailed, together with the filing fee and the late filing penalty fee provided in
19 section 10-19.1-147, then the secretary of state shall restore its certificate of
20 incorporation or certificate of authority to good standing.

21 7. A corporation that fails to file its annual report, together with the filing and penalty
22 fees for late filing provided in section 10-19.1-147, within one year after the date
23 provided in subsection 3 ceases to exist as a corporation and is considered
24 involuntarily dissolved by operation of law.

25 a. The secretary of state shall note the dissolution of the corporation's certificate
26 of incorporation on the records of the secretary of state and shall give notice
27 of the action to the dissolved corporation.

28 b. Notice by the secretary of state must be mailed to the last registered agent at
29 the last registered office of record.

- 1 8. A foreign corporation that fails to file its annual report, together with the filing and
2 penalty fees for late filing provided in section 10-19.1-147, within one year after the
3 date provided in subsection 3 forfeits its authority to transact business in this state.
- 4 a. The secretary of state shall note the revocation of the foreign corporation's
5 certificate of authority on the records of the secretary of state and shall give
6 notice of the action to the foreign corporation.
- 7 b. Notice by the secretary of state must be mailed to the foreign corporation's
8 last registered agent at the last registered office of record.
- 9 c. The decision by the secretary of state that a certificate of authority must be
10 revoked under this subsection is final.
- 11 9. A corporation dissolved for failure to file an annual report, or a foreign corporation
12 whose authority was forfeited by failure to file an annual report, may be reinstated
13 by filing a past-due report, together with the filing and penalty fees for an annual
14 report and a reinstatement fee as provided in section 10-19.1-147. The fees must
15 be paid and an annual report filed within one year following the involuntary
16 dissolution or revocation. Reinstatement under this subsection does not affect the
17 rights or liability for the time from the dissolution or revocation to the reinstatement.

18 **SECTION 37. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **10-19.1-147. Fees for filing records - Issuing certificates - License fees.** The
21 secretary of state shall charge and collect for:

- 22 1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ ninety
23 dollars.
- 24 2. Filing articles of amendment, twenty dollars.
- 25 3. Filing articles of correction, twenty dollars.
- 26 4. Filing restated articles of incorporation, thirty dollars.
- 27 5. Filing articles of conversion of a corporation, fifty dollars and:
- 28 a. If the organization resulting from the conversion will be a domestic
29 organization governed by the laws of this state, then the fees provided by the
30 governing laws to establish or register a new organization like the
31 organization resulting from the conversion; or

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- 1 b. If the organization resulting from the conversion will be a foreign organization
2 that will transact business in this state, then the fees provided by the
3 governing laws to obtain a certificate of authority or register an organization
4 like the organization resulting from the conversion.
- 5 6. Filing abandonment of conversion, fifty dollars.
- 6 7. Filing articles of merger or consolidation and issuing a certificate of merger or
7 consolidation, fifty dollars.
- 8 8. Filing articles of abandonment of merger, fifty dollars.
- 9 9. Filing an application to reserve a corporate name, ten dollars.
- 10 10. Filing a notice of transfer of a reserved corporate name, ten dollars.
- 11 11. Filing a cancellation of reserved corporate name, ten dollars.
- 12 12. Filing a consent to use of name, ten dollars.
- 13 13. Filing a statement of change of address of registered office or change of registered
14 agent, or both, ten dollars.
- 15 14. Filing a statement of change of address of registered office by registered agent,
16 ten dollars for each corporation affected by such change.
- 17 15. Filing a registered agent's consent to serve in such capacity, ten dollars.
- 18 16. Filing a resignation as registered agent, ten dollars.
- 19 17. Filing a statement of the establishment of a series of shares, twenty dollars.
- 20 18. Filing a statement of cancellation of shares, twenty dollars.
- 21 19. Filing a statement of reduction of stated capital, twenty dollars.
- 22 20. Filing a statement of intent to dissolve, ten dollars.
- 23 21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- 24 22. Filing articles of dissolution, twenty dollars.
- 25 23. Filing an application of a foreign corporation for a certificate of authority to transact
26 business in this state and issuing a certificate of authority, ~~forty~~ one hundred
27 thirty-five dollars.
- 28 24. Filing an application of a foreign corporation for an amended certificate of authority
29 to transact business in this state and issuing an amended certificate of authority,
30 forty dollars.

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- 1 25. Filing a certificate of fact stating a merger or consolidation of a foreign corporation
2 holding a certificate of authority to transact business in this state, fifty dollars.
- 3 26. Filing an application for withdrawal of a foreign corporation and issuing a certificate
4 of withdrawal, twenty dollars.
- 5 27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
- 6 a. The secretary of state shall charge and collect additional fees for late filing of
7 the annual report as follows:
- 8 (1) Within ninety days after the date provided in subsection 3 of section
9 10-19.1-146, twenty dollars;
- 10 (2) Thereafter, sixty dollars; and
- 11 (3) After the involuntary dissolution of a corporation, or the revocation of
12 the certificate of authority of a foreign corporation, the reinstatement fee
13 of one hundred thirty-five dollars.
- 14 b. Fees paid to the secretary of state according to this subsection are not
15 refundable if an annual report submitted to the secretary of state cannot be
16 filed because it lacks information required by section 10-19.1-146, or the
17 annual report lacks sufficient payment as required by this subsection.
- 18 28. Filing any process, notice, or demand for service, twenty-five dollars.
- 19 29. Furnishing a certified copy of any record, instrument, or paper relating to a
20 corporation, one dollar for every four pages or fraction and fifteen dollars for the
21 certificate and affixing the seal thereto.
- 22 30. ~~License fee of fifty dollars for the first fifty thousand dollars of a corporation's~~
23 ~~authorized shares, or fraction, and the further sum of ten dollars if paid at the time~~
24 ~~of authorization, or twelve dollars if paid after authorized shares are issued, for~~
25 ~~every additional ten thousand dollars of its authorized shares, or fraction thereof, in~~
26 ~~excess of fifty thousand dollars.~~
- 27 a. ~~A license fee is payable by a corporation at the time of:~~
- 28 ~~(1) Filing articles of incorporation;~~
- 29 ~~(2) Filing articles of amendment increasing the number or value of~~
30 ~~authorized shares; or~~

- 1 ~~(3) Filing articles of merger or consolidation increasing the number or value~~
2 ~~of authorized shares a surviving or new corporation will have authority~~
3 ~~to issue above the aggregate number or value of shares the constituent~~
4 ~~corporations had authority to issue.~~
- 5 b. ~~A license fee payable on an increase in authorized shares must be imposed~~
6 ~~only on the additional shares, but the amount of previously authorized shares~~
7 ~~must be taken into account in determining the rate applicable to the additional~~
8 ~~authorized shares.~~
- 9 e. ~~For the purposes of this subsection, shares without par value are considered~~
10 ~~worth one dollar per share.~~
- 11 d. ~~The minimum sum of fifty dollars must be paid for authorized shares at the~~
12 ~~time of filing articles of incorporation.~~
- 13 e. ~~A corporation increasing authorized shares by articles of amendment or~~
14 ~~articles of merger must have previously paid for a minimum of fifty thousand~~
15 ~~dollars of authorized shares.~~
- 16 ~~(1) Thereafter, a corporation may postpone the payment for any additional~~
17 ~~amount until the filing of an annual report after the unpaid shares are~~
18 ~~issued.~~
- 19 ~~(2) Any additional amount must be paid in increments of ten thousand~~
20 ~~dollars of authorized shares.~~
- 21 f. ~~The provisions of this subsection do not apply to a building and loan or~~
22 ~~savings and loan association.~~
- 23 31. ~~License fee of eighty five dollars from each foreign corporation at the time of filing~~
24 ~~an application for a certificate of authority to transact business in this state.~~
25 ~~Thereafter, the secretary of state shall fix the license fee for each foreign~~
26 ~~corporation as follows:~~
- 27 a. ~~The secretary of state shall first ascertain the license fee which a newly~~
28 ~~organized corporation would be required to pay if it had authorized shares of~~
29 ~~the same kind and amount as the issued or allotted shares of the reporting~~
30 ~~foreign corporation shown by its filed annual report.~~

1 b. ~~Said amount must be multiplied by a fraction, the numerator of which must be~~
2 ~~the sum of the value of the property of the foreign corporation located in this~~
3 ~~state and the gross receipts of the foreign corporation derived from that~~
4 ~~foreign corporation's business transacted within this state, and the~~
5 ~~denominator of which must be the sum of the value of all of that foreign~~
6 ~~corporation's property wherever located and the gross receipts of the foreign~~
7 ~~corporation derived from that foreign corporation's business wherever~~
8 ~~transacted. The amounts used in determining the numerator and~~
9 ~~denominator must be determined from the foreign corporation's filed annual~~
10 ~~report.~~

11 e. ~~From the product of such multiplication, there must be deducted the~~
12 ~~aggregate amount of license fee previously paid by the foreign corporation,~~
13 ~~and the remainder, if any, must be the amount of additional fee to be paid by~~
14 ~~the foreign corporation.~~

15 ~~The secretary of state shall enter the amount of any additional license fee in the~~
16 ~~records of the foreign corporation in the secretary of state's office and shall mail a~~
17 ~~notice of the amount of additional license fee due to the foreign corporation at the~~
18 ~~foreign corporation's principal office. The additional license fee must be paid by~~
19 ~~the foreign corporation before the annual report may be filed by the secretary of~~
20 ~~state. Amounts less than five dollars are not collected.~~

21 ~~32.~~ Any record submitted for approval before the actual time of submission for filing,
22 one-half of the fee provided in this section for filing the record.

23 ~~33.~~ 31. Filing any other statement of a corporation or foreign corporation, ten dollars.

24 **SECTION 38. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise
27 requires:

28 1. "Acquiring organization" means the ~~limited liability company or~~ domestic or foreign
29 ~~limited liability company, or corporation or foreign corporation~~ organization that
30 ~~acquires in an exchange the shares~~ ownership interests of a corporation or

- 1 ~~another foreign corporation the membership interests of a limited liability company~~
2 ~~or domestic organization in an exchange.~~
- 3 2. "Address" means:
- 4 a. In the case of a registered office or principal executive office, the mailing
5 address, including a zip code, of the actual office location which may not be
6 only a post-office box; and
- 7 b. In all other cases, the mailing address, including a zip code.
- 8 3. "Articles" or "articles of organization" means:
- 9 a. In the case of a limited liability company organized under this chapter, articles
10 of organization, articles of amendment, a statement of change of registered
11 office, registered agent, or name of registered agent, a statement establishing
12 or fixing the rights and preferences of a class or series of membership
13 interests, articles of merger, articles of abandonment, articles of conversion,
14 and articles of termination.
- 15 b. In the case of a foreign limited liability company, the term includes all records
16 serving a similar function required to be filed with the secretary of state or
17 other state office of the ~~limited liability company's~~ state of organization of the
18 foreign limited liability company.
- 19 4. "Authenticated electronic communication" means:
- 20 a. That the electronic communication is delivered:
- 21 (1) To the principal place of business of the limited liability company; or
22 (2) To a manager or agent of the limited liability company authorized by the
23 limited liability company to receive the electronic communication; and
- 24 b. That the electronic communication sets forth information from which the
25 limited liability company can reasonably conclude that the electronic
26 communication was sent by the purported sender.
- 27 5. "Ballot" means a written ballot or a ballot transmitted by electronic
28 communications.
- 29 6. "Board" or "board of governors" means the board of governors of a limited liability
30 company.
- 31 7. "Board member" means:

- 1 a. An individual serving on the board of governors in the case of a limited liability
2 company; and
- 3 b. An individual serving on the board of directors in the case of a corporation.
- 4 8. "Bylaws" means any rule, resolution, or other provision, regardless how
5 designated, that:
- 6 a. Relates to the management of the business or the regulation of the affairs of
7 the limited liability company; and
- 8 b. Was expressly part of the bylaws by the action, taken from time to time under
9 section 10-32-68, by the board or the members.
- 10 9. "Class", when used with reference to membership interests, means a category of
11 membership interests which differs in one or more rights or preferences from
12 another category of membership interests of the limited liability company.
- 13 10. "Closely held limited liability company" means a limited liability company that does
14 not have more than thirty-five members.
- 15 11. "Constituent organization" means ~~a limited liability company or a domestic or~~
16 ~~foreign corporation~~ an organization that:
- 17 a. In a merger, is either the surviving organization or an organization that is
18 merged into the surviving organization; or
- 19 b. In an exchange, is either the acquiring organization or an organization whose
20 securities are acquired by the acquiring organization.
- 21 12. "Contribution" means any cash, property, services rendered, or a promissory note
22 or other binding obligation to contribute cash or property or to perform services,
23 which a member contributes to a limited liability company in the capacity of that
24 member as a member.
- 25 13. "Contribution agreement" means an agreement between a person and a limited
26 liability company under which:
- 27 a. The person agrees to make a contribution in the future; and
- 28 b. The limited liability company agrees that, at the time specified for the
29 contribution in the future, the limited liability company will accept the
30 contribution and reflect the contribution in the required records.

- 1 14. "Contribution allowance agreement" means an agreement between a person and a
2 limited liability company under which:
- 3 a. The person has the right, but not the obligation, to make a contribution in the
4 future; and
- 5 b. The limited liability company agrees that, if the person makes the specified
6 contribution at the time specified in the future, the limited liability company will
7 accept the contribution and reflect the contribution in the required records.
- 8 15. "Converted organization" means the organization resulting from a conversion
9 under sections 10-32-108.1 through 10-32-108.6.
- 10 16. "Converting organization" means the organization that effects a conversion under
11 sections 10-32-108.1 through 10-32-108.6.
- 12 17. "Corporation" or "domestic corporation" means a corporation, other than a foreign
13 corporation, organized for profit and incorporated under chapter 10-19.1.
- 14 18. "Dissolution" means that the limited liability company incurred an event under
15 subsection 1 of section 10-32-109, subject only to sections 10-32-116 and
16 10-32-124, that obligates the limited liability company to wind up the limited liability
17 company's affairs and to terminate the limited liability company's existence as a
18 legal entity.
- 19 19. "Dissolution avoidance consent" means the consent of all remaining members:
- 20 a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after
21 the occurrence of any event that terminates the continued membership of a
22 member in the limited liability company; and
- 23 b. That the limited liability company must be continued as a legal entity without
24 dissolution.
- 25 20. "Distribution" means a direct or indirect transfer of money or other property, other
26 than its own membership interests, with or without consideration, or an incurrence
27 or issuance of indebtedness, by a limited liability company to any of ~~the limited~~
28 ~~liability company's~~ its members in respect of its membership interests. ~~A~~
29 ~~distribution~~ and may be in the form of an interim distribution or a termination
30 distribution, or as consideration for the purchase, redemption, or other acquisition
31 of its membership interests, or otherwise.

- 1 21. "Domestic organization" means an organization created under the laws of this
2 state.
- 3 22. "Electronic" means relating to technology having electrical, digital, magnetic,
4 wireless, optical, electromagnetic, or similar capabilities.
- 5 23. "Electronic communication" means any form of communication, not directly
6 involving the physical transmission of paper:
- 7 a. That creates a record that may be retained, retrieved, and reviewed by a
8 recipient of the communication; and
- 9 b. That may be directly reproduced in paper form by the recipient through an
10 automated process.
- 11 24. "Electronic record" means a record created, generated, sent, communicated,
12 received, or stored by electronic means.
- 13 25. "Electronic signature" means an electronic sound, symbol, or process attached to
14 or logically associated with a record and signed or adopted by a person with the
15 intent to sign the record.
- 16 26. "Filed with the secretary of state" means except as otherwise permitted by law or
17 rule:
- 18 a. That a record meeting the applicable requirements of this chapter, together
19 with the fees provided in section 10-32-150, has been delivered or
20 communicated to the secretary of state by a method or medium of
21 communication acceptable by the secretary of state, and has been
22 determined by the secretary of state to conform to law.
- 23 b. That the secretary of state did then:
- 24 (1) Record the actual date on which the record was filed, and if different,
25 the effective date of filing; and
- 26 (2) Record the record in the office of the secretary of state.
- 27 27. "Financial rights" means a member's rights:
- 28 a. To share in profits and losses as provided in section 10-32-36;
- 29 b. To share in distributions as provided in section 10-32-60;
- 30 c. To receive interim distributions as provided in section 10-32-61; and

- 1 d. To receive termination distributions as provided in subdivision c of
2 subsection 1 of section 10-32-131.
- 3 28. "Foreign corporation" means a corporation organized for profit that is incorporated
4 under laws other than the laws of this state for a purpose for which a corporation
5 may be incorporated under chapter 10-19.1.
- 6 29. "Foreign limited liability company" means a limited liability company which is
7 organized under or governed by laws other than the laws of this state for a
8 purpose for which a limited liability company may be organized under this chapter.
- 9 30. "Foreign organization" means an organization created under laws other than the
10 laws of this state for a purpose for which an organization may be created under the
11 laws of this state.
- 12 31. "Good faith" means honesty in fact in the conduct of the act or transaction
13 concerned.
- 14 32. "Governance rights" means all of a member's rights as a member in the limited
15 liability company other than financial rights and the right to assign financial rights.
- 16 33. "Governing ~~board~~ body" means for an organization that is:
- 17 a. ~~The~~ A corporation, its board of ~~governors in the case of a~~ directors;
- 18 b. A limited liability company, its board of governors; and
- 19 ~~b. The board of directors in the case of a corporation or~~
- 20 c. Any other organization, the body selected by its owners that has the ultimate
21 power to determine the policies of the organization and to control its policies.
- 22 34. "Governing statute" of an organization means:
- 23 a. With respect to a domestic organization, the following chapters of this code
24 which govern the internal affairs of the organization:
- 25 (1) If a corporation, then chapter 10-19.1;
- 26 (2) If a limited liability company, then this chapter;
- 27 (3) If a general partnership, then chapters 45-13 through 45-21;
- 28 (4) If a limited partnership, then chapter 45-10.2;
- 29 (5) If a limited liability partnership, then chapter 45-22; and
- 30 (6) If a limited liability limited partnership, then chapter 45-23; and

- 1 b. With respect to a foreign organization, the laws of the jurisdiction under which
2 the organization is created and which govern the internal affairs of the
3 organization.
- 4 35. "Governor" means an individual serving on the board.
- 5 36. "Intentionally" means that the person referred to either has a purpose to do or fail
6 to do the act or cause the result specified or believes that the act or failure to act, if
7 successful, will cause that result. A person "intentionally" violates a statute:
- 8 a. If the person intentionally does the act or causes the result prohibited by the
9 statute; or
- 10 b. If the person intentionally fails to do the act or cause the result required by the
11 statute, even though the person may not know of the existence or
12 constitutionality of the statute or the scope or meaning of the terms used in
13 the statute.
- 14 37. "Legal representative" means a person empowered to act for another person,
15 including an agent, manager, officer, partner, or associate of an organization; a
16 trustee of a trust; a personal representative; a trustee in bankruptcy; and a
17 receiver, guardian, custodian, or conservator.
- 18 38. "Limited liability company" or "domestic limited liability company" means a limited
19 liability company, other than a foreign limited liability company, organized under or
20 governed by this chapter.
- 21 39. "Manager" means:
- 22 a. An individual who is eighteen years of age or more and who is elected,
23 appointed, or otherwise designated as a manager by the board; and
- 24 b. An individual considered elected as a manager pursuant to section 10-32-92.
- 25 40. "Member" means a person, with or without voting rights, reflected in the required
26 records of a limited liability company as the owner of a membership interest in the
27 limited liability company.
- 28 41. "Membership interest" means one of the units, however designated, into which a
29 ~~member's~~ the proprietary interest of the members in a limited liability company is
30 divided consisting of:
- 31 a. ~~A member's~~ The financial rights of a member;

- 1 b. ~~A member's~~ The right of a member to assign financial rights as provided in
2 section 10-32-31;
3 c. ~~A member's~~ The governance rights of a member, if any; and
4 d. ~~A member's~~ The right of a member to assign any governance rights owned as
5 provided in section 10-32-32.

6 42. "Notice":

- 7 a. Is given by a member of a limited liability company to the limited liability
8 company or a manager of a limited liability company:
9 (1) When in writing and mailed or delivered to the limited liability company
10 or the manager at the registered office or principal executive office of
11 the limited liability company.
12 (2) When given by a form of electronic communication consented to by the
13 limited liability company or a manager to which the notice is given:
14 (a) If by facsimile communication, when directed to a telephone
15 number at which the limited liability company or a manager has
16 consented to receive notice;
17 (b) If by electronic mail, when directed to an electronic mail address
18 at which the limited liability company or a manager has
19 consented to receive notice;
20 (c) If by posting on an electronic network on which the limited liability
21 company or a manager has consented to receive notice, together
22 with separate notice to the limited liability company or a manager
23 of the specific posting, upon the later of:
24 [1] The posting; or
25 [2] The giving of the separate notice; or
26 (d) If by any other form of electronic communication by which the
27 limited liability company or a manager has consented to receive
28 notice, when directed to the limited liability company or a
29 manager.
30 b. Is given, in all other cases:

- 1 (1) When mailed to the person at an address designated by the person or
2 at the last-known address of the person;
- 3 (2) When handed to the person;
- 4 (3) When left at the office of the person with a clerk or other person in
5 charge of the office or:
- 6 (a) If there is no one in charge, when left in a conspicuous place in
7 the office; or
- 8 (b) If the office is closed or the person to be notified has no office,
9 when left at the dwelling house or usual place of abode of the
10 person with some person of suitable age and discretion who is
11 residing there; or
- 12 (4) When given by a form of electronic communication consented to by the
13 person to whom the notice is given:
- 14 (a) If by facsimile communication, when directed to a telephone
15 number at which the person has consented to receive notice.
- 16 (b) If by electronic mail, when directed to an electronic mail address
17 at which the person has consented to receive notice.
- 18 (c) If by posting on an electronic network on which the person has
19 consented to receive notice, together with separate notice to the
20 person of the specific posting, upon the later of:
- 21 [1] The posting; or
- 22 [2] The giving of the separate notice.
- 23 (d) If by any other form of electronic communication by which the
24 person has consented to receive notice when directed to the
25 person.
- 26 (5) When the method is fair and reasonable when all of the circumstances
27 are considered.
- 28 c. Is given by mail when deposited in the United States mail with sufficient
29 postage affixed.
- 30 d. Is deemed received when it is given.
- 31 43. "Organization" means:

- 1 a. Whether domestic or foreign, a limited liability company, corporation,
2 partnership, limited partnership, limited liability partnership, limited liability
3 limited partnership, or any other person having a governing statute; but
4 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
5 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
6 which is incorporated in another jurisdiction.
- 7 44. "Originating records" means for an organization which is:
8 a. A corporation, its articles of incorporation;
9 b. A limited liability company, its articles of organization;
10 c. A limited partnership, its certificate of limited partnership;
11 d. A limited liability partnership, its registration; or
12 e. A limited liability limited partnership, its certificate of limited liability limited
13 partnership.
- 14 ~~44.~~ 45. "Owners" means:
15 a. ~~Members in the case of a limited liability company or a nonprofit corporation;~~
16 ~~and~~
17 b. ~~Shareholders in the case of a corporation~~ the holder of ownership interests in
18 an organization.
- 19 ~~45.~~ 46. "Ownership interests" means for a domestic or foreign organization that is:
20 a. ~~Membership interests in the case of a limited liability company or a nonprofit~~
21 A corporation, it shares; and
22 b. ~~Shares in the case of a corporation~~ A limited liability company, its
23 membership interests;
24 c. A limited partnership, its partnership interests;
25 d. A general partnership, its partnership interests;
26 e. A limited liability partnership, its partnership interests;
27 f. A limited liability limited partnership, its partnership interests; or
28 g. Any other organization, its governance or transferable interests.
- 29 ~~46.~~ 47. "Parent" of a specified ~~limited liability company~~ organization means a ~~limited~~
30 ~~liability company, a foreign limited liability company, a corporation, or a foreign~~
31 ~~corporation~~ an organization that directly or indirectly, through related organizations,

1 owns more than fifty percent of the voting power of the ~~membership~~ ownership
2 interests entitled to vote for governors, or other members of the governing body of
3 the specified ~~limited liability company~~ organization.

4 ~~47.~~ 48. "Pertains" means a contribution "pertains":

- 5 a. To a particular series when the contribution is made in return for a
6 membership interest in that particular series.
7 b. To a particular class when the class has no series and the contribution is
8 made in return for a membership interest in the class.

9 A contribution that pertains to a series does not pertain to the class of which the
10 series is a part.

11 ~~48.~~ 49. "Principal executive office" means:

- 12 a. If the limited liability company has an elected or appointed president, an office
13 where the elected or appointed president of the limited liability company has
14 an office; or
15 b. If the limited liability company has no elected or appointed president, the
16 registered office of the limited liability company.

17 ~~49.~~ 50. "Record" means information that is inscribed on a tangible medium or that is stored
18 in an electronic or other medium and is retrievable in perceivable form.

19 ~~50.~~ 51. "Registered office" means the place in this state designated in a limited liability
20 company's articles of organization or a foreign limited liability company's certificate
21 of authority as the registered office.

22 ~~51.~~ 52. "Related organization" means an organization that controls, is controlled by, or is
23 under common control with another organization with control existing if an
24 organization:

- 25 a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership~~
26 ~~interests, or other~~ ownership interests of another organization;
27 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
28 more of the voting members of the governing body of another organization; or
29 c. Has the power, directly or indirectly, to direct or cause the direction of the
30 management and policies of another organization, whether through the
31 ownership of voting interests, by contract, or otherwise.

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- 1 ~~52.~~ 53. "Remote communication" means communication via electronic communication,
2 conference telephone, videoconference, the internet, or such other means by
3 which persons not physically present in the same location may communicate with
4 each other on a substantially simultaneous basis.
- 5 ~~53.~~ 54. "Required records" are those records required to be maintained under section
6 10-32-51.
- 7 ~~54.~~ 55. "Security" has the meaning given in section 10-04-02.
- 8 ~~55.~~ 56. "Series" means a category of membership interests, within a class of membership
9 interests, that has some of the same rights and preferences as other membership
10 interests within the same class, but that differ in one or more rights and
11 preferences from another category of membership interests within that class.
- 12 ~~56.~~ 57. "Signed" means:
- 13 a. That the signature of a person, which may be a facsimile affixed, engraved,
14 printed, placed, stamped with indelible ink, transmitted by facsimile
15 telecommunication or electronically, or in any other manner reproduced on
16 the record, is placed on a record, ~~as provided under section 41-01-14~~ with the
17 present intention to authenticate that record.
- 18 b. With respect to a record required by this chapter to be filed with the secretary
19 of state, that:
- 20 (1) The record has been signed by a person authorized to do so by this
21 chapter, the articles of organization, a member-control agreement, or
22 the bylaws or a resolution approved by the governors as required by
23 section 10-32-83 or the members as required by section 10-32-42; and
- 24 (2) The signature and the record are communicated by a method or
25 medium acceptable by the secretary of state.
- 26 ~~57.~~ 58. "Subsidiary" of a specified ~~limited liability company~~ organization means:
- 27 a. ~~A limited liability company or a foreign limited liability company having more~~
28 ~~than fifty percent of the voting power of its membership interests entitled to~~
29 ~~vote for governors owned directly or indirectly through related organizations~~
30 ~~by the specified limited liability company; or~~

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1 b. ~~A domestic corporation or a foreign corporation having more than fifty percent~~
2 ~~of the voting power of its shares entitled to vote for directors owned directly or~~
3 ~~indirectly through related organizations by the specified limited liability~~
4 ~~company~~ an organization having more than fifty percent of the voting power
5 of its ownership interests entitled to vote for governors, or other members of
6 the governing body of the organization owned directly, or indirectly, through
7 related organizations, by the specified organization.

8 ~~58.~~ 59. "Successor organization" means an organization that, pursuant to a business
9 continuation agreement or an order of the court under subsection 6 of section
10 10-32-119, continues the business of the dissolved and terminated limited liability
11 company.

12 ~~59.~~ 60. "Surviving organization" means the ~~limited liability company or foreign limited~~
13 ~~liability company or domestic or foreign corporation~~ organization resulting from a
14 merger which:

- 15 a. May preexist the merger; or
16 b. May be created by the merger.

17 ~~60.~~ 61. "Termination" means the end of the existence of a limited liability ~~company's~~
18 ~~existence~~ company as a legal entity and occurs when a notice of termination is:
19 a. Filed with the secretary of state under section 10-32-117 together with the
20 fees provided in section 10-32-150; or
21 b. Considered filed with the secretary of state under subdivision c of
22 subsection 2 of section 10-32-106 together with the fees provided in section
23 10-32-150.

24 ~~64.~~ 62. "Vote" includes authorization by written action.

25 ~~62.~~ 63. "Winding up" means the period triggered by dissolution during which the limited
26 liability company ceases to carry on business, except to the extent necessary for
27 concluding affairs, and disposing of assets under section 10-32-131.

28 ~~63.~~ 64. "Written action" means:

- 29 a. A written record signed by every person required to take the action described;
30 and

- 1 b. The counterparts of a written record signed by any person taking the action
2 described.
- 3 (1) Each counterpart constitutes the action of the persons signing it; and
4 (2) All the counterparts, taken together, constitute one written action by all
5 of the persons signing them.

6 **SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Reservation of legislative right.** The legislative assembly reserves the right to amend
9 or repeal the provisions of this chapter. A limited liability company organized under or
10 governed by this chapter is subject to this reserved right.

11 **SECTION 40. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **10-32-07. Articles of organization.**

- 14 1. The articles of organization must contain:
- 15 a. The name of the limited liability company;
- 16 b. The address of the registered office of the limited liability company and the
17 name of the limited liability company's registered agent at that address;
- 18 c. The name and address of each organizer;
- 19 d. The effective date of organization:
- 20 (1) If a later date than that on which the certificate of organization is issued
21 by the secretary of state; and
- 22 (2) Which may not be later than ninety days after the date on which the
23 certificate of organization is issued; and
- 24 e. If the articles of organization are filed with the secretary of state:
- 25 (1) Before July 1, 1999, a statement stating in years that the period of
26 existence for the limited liability company must be a period of thirty
27 years from the date the articles of organization are filed with the
28 secretary of state, unless the articles of organization expressly
29 authorize a shorter or longer period of duration, which may be
30 perpetual.

- 1 (2) After June 30, 1999, a statement stating in years the period of
2 existence of the limited liability company, if other than perpetual.
- 3 2. The following provisions govern a limited liability company unless modified in the
4 articles of organization or a member-control agreement under section 10-32-50:
- 5 a. A limited liability company has general business purposes as provided in
6 section 10-32-04;
- 7 b. A limited liability company has certain powers as provided in section
8 10-32-23;
- 9 c. The power to adopt, amend, or repeal the bylaws is vested in the board as
10 provided in subsection 2 of section 10-32-68;
- 11 d. A limited liability company must allow cumulative voting for governors as
12 provided in section 10-32-76;
- 13 e. The affirmative vote of the greater of a majority of governors present or a
14 majority of the minimum number of governors constituting a quorum is
15 required for an action of the board as provided in section 10-32-83;
- 16 f. A written action by the board taken without a meeting must be signed by all
17 governors as provided in section 10-32-84;
- 18 g. The board may accept contributions, make contribution agreements, and
19 make contribution allowance agreements as provided in subsection 1 of
20 section 10-32-56 and sections 10-32-58 and 10-32-59;
- 21 h. All membership interests are ordinary membership interests entitled to vote
22 and are of one class with no series as provided in subdivisions a and b of
23 subsection 5 of section 10-32-56;
- 24 i. All membership interests have equal rights and preferences in all matters not
25 otherwise provided for by the board as provided in subdivision b of
26 subsection 5 of section 10-32-56;
- 27 j. The value of previous contributions must be restated when a new contribution
28 is accepted as provided in subsections 3 and 4 of section 10-32-57;
- 29 k. A member has certain preemptive rights, unless otherwise provided by the
30 board as provided in section 10-32-37;

- 1 l. The affirmative vote of the greater of the owners of a majority of the voting
2 power of the membership interests present and entitled to vote at a duly held
3 meeting or a majority of the voting power of the membership interests with
4 voting rights constituting the minimum voting power needed for a quorum for
5 the transaction of business is required for an action of the members, except
6 when this chapter requires the affirmative vote of:
- 7 (1) A plurality of the votes cast as provided in subsection 1 of section
8 10-32-76; or
- 9 (2) A majority of the voting power of all membership interests entitled, to
10 vote as provided in subsection 1 of section 10-32-42;
- 11 m. The voting power of each membership interest is in proportion to the value
12 reflected in the required records of the contributions of the members as
13 provided in section 10-32-40.1;
- 14 n. Members share in distributions in proportion to the value reflected in the
15 required records of the contributions of members as provided in section
16 10-32-60;
- 17 o. Members share profits and losses in proportion to the value reflected in the
18 required records of the contributions of members as provided in section
19 10-32-36;
- 20 p. A written action by the members taken without a meeting must be signed by
21 all members as provided in section 10-32-43;
- 22 q. Members have no right to receive distributions in kind and the limited liability
23 company has only limited rights to make distributions in kind as provided in
24 section 10-32-62;
- 25 r. A member is not subject to expulsion as provided in subsection 2 of section
26 10-32-30;
- 27 s. Unanimous consent is required for the transfer of governance rights to a
28 person not already a member as provided in subsection 2 of section
29 10-32-32;

- 1 t. For a limited liability company whose existence begins before July 1, 1999,
2 unanimous consent is required to avoid dissolution as provided in
3 subdivision e of subsection 1 of section 10-32-109;
- 4 u. The termination of a person's membership interest has specified
5 consequences as provided in section 10-32-30; and
- 6 v. Restrictions apply to the assignment of governance rights as provided in
7 section 10-32-32.
- 8 3. The following provisions govern a limited liability company unless modified in the
9 articles of organization, a member-control agreement under section 10-32-50, or in
10 the bylaws:
- 11 a. Governors serve for an indefinite term that expires at the next regular meeting
12 of members as provided in section 10-32-72;
- 13 b. The compensation of governors is fixed by the board as provided in section
14 10-32-74;
- 15 c. A certain method must be used for removal of governors as provided in
16 section 10-32-78;
- 17 d. A certain method must be used for filling board vacancies as provided in
18 section 10-32-79;
- 19 e. If the board fails to select a place for a board meeting, it must be held at the
20 principal executive office as provided in subsection 1 of section 10-32-80;
- 21 f. The notice of a board meeting need not state the purpose of the meeting as
22 provided in subsection 3 of section 10-32-80;
- 23 g. A majority of the board is a quorum for a board meeting as provided in section
24 10-32-82;
- 25 h. A committee ~~consists~~:
- 26 (1) Must consist of one or more individuals, who need not be governors,
27 appointed by affirmative vote of a majority of the governors present as
28 provided in subsection 2 of section 10-32-85; and
- 29 (2) A committee may create one or more subcommittees, each consisting
30 of one or more members of the committees and may delegate to the

- 1 subcommittee any or all of the authority of the committee as provided in
2 subsection 7 of section 10-32-85;
- 3 i. The board may establish a special litigation committee as provided in section
4 10-32-85;
- 5 j. The president and treasurer have specified duties, until the board determines
6 otherwise as provided in section 10-32-89;
- 7 k. Managers may delegate some or all of their duties and powers, if not
8 prohibited by the board from doing so as provided in section 10-32-95;
- 9 l. Regular meetings of members need not be held, unless demanded by a
10 member under certain conditions as provided in section 10-32-38;
- 11 m. In all instances when a specific minimum notice period has not otherwise
12 been fixed by law, not less than ten days' notice is required for a meeting of
13 members as provided in subsection 2 of section 10-32-40;
- 14 n. For a quorum at a members' meeting, there is required a majority of the
15 voting power of the membership interests entitled to vote at the meeting as
16 provided in section 10-32-44;
- 17 o. The board may fix a date up to fifty days before the date of a members'
18 meeting as the date for the determination of the members entitled to notice of
19 and entitled to vote at the meeting as provided in section 10-32-40.1;
- 20 p. Indemnification of certain persons is required as provided in section 10-32-99;
- 21 q. The board may authorize, and the limited liability company may make,
22 distributions not prohibited, limited, or restricted by an agreement as provided
23 in subsection 1 of section 10-32-64; and
- 24 r. Members have no right to interim distributions except as provided through the
25 bylaws or an act of the board as provided in section 10-32-61.
- 26 4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of
27 organization or a member-control agreement under section 10-32-50. The
28 provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the
29 articles of organization, in a member-control agreement under section 10-32-50,
30 or, in the bylaws:

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- 1 a. The persons to serve as the first board may be named in the articles of
- 2 organization as provided in subsection 1 of section 10-32-69;
- 3 b. A manner for increasing or decreasing the number of governors may be
- 4 provided as provided in section 10-32-70;
- 5 c. Additional qualifications for governors may be imposed as provided in section
- 6 10-32-71;
- 7 d. Governors may be classified as provided in section 10-32-75;
- 8 e. The date, time, and place of board meetings may be fixed as provided in
- 9 subsection 1 of section 10-32-80;
- 10 f. Absent governors may be permitted to give written consent or opposition to a
- 11 proposal as provided in section 10-32-81;
- 12 g. A larger than majority vote may be required for board action as provided in
- 13 section 10-32-83;
- 14 h. Authority to sign and deliver certain records may be delegated to a manager
- 15 or agent of the limited liability company other than the president as provided
- 16 in section 10-32-89;
- 17 i. Additional managers may be designated as provided in section 10-32-88;
- 18 j. Additional powers, rights, duties, and responsibilities may be given to
- 19 managers as provided in section 10-32-89;
- 20 k. A method for filling vacant offices may be specified as provided in
- 21 subsection 3 of section 10-32-94;
- 22 l. The date, time, and place of regular member meetings may be fixed as
- 23 provided in subsection 3 of section 10-32-38;
- 24 m. Certain persons may be authorized to call special meetings of members as
- 25 provided in subsection 1 of section 10-32-39;
- 26 n. Notices of member meetings may be required to contain certain information
- 27 as provided in subsection 3 of section 10-32-40;
- 28 o. A larger than majority vote may be required for member action as provided in
- 29 section 10-32-42;

- 1 p. Voting rights may be granted in or pursuant to the articles of organization to
2 persons who are not members as provided in subsection 3 of section
3 10-32-40.1;
- 4 q. Limited liability company actions giving rise to dissenters' rights may be
5 designated as provided in subdivision d of subsection 1 of section 10-32-55;
6 and
- 7 r. A governor's personal liability to the limited liability company or the limited
8 liability company's members for monetary damages for breach of fiduciary
9 duty as a governor may be eliminated or limited in the articles as provided in
10 subsection 4 of section 10-32-86.
- 11 5. ~~Subsection 4 does not limit the right of the board, by resolution, to take an action~~
12 ~~the bylaws may authorize under this subsection without including the authorization~~
13 ~~in the bylaws, unless the authorization is required to be included in the bylaws by~~
14 ~~another provision of this chapter. The articles of organization may contain other~~
15 ~~provisions not inconsistent with law relating to the management of the business or~~
16 ~~the regulation of the affairs of the limited liability company.~~
- 17 6. ~~The~~ It is not necessary to set forth in the articles of organization may contain other
18 ~~provisions not inconsistent with law relating to the management of the business or~~
19 ~~the regulation of the affairs~~ any of the limited liability company powers granted by
20 this chapter.
- 21 7. ~~It is not necessary to set forth in the articles of organization any of the limited~~
22 ~~liability company powers granted by~~ Subsection 4 does not limit the right of the
23 board by resolution to take an action the bylaws may authorize under this
24 subsection without including the authorization in the bylaws, unless the
25 authorization is required to be included in the bylaws by another provision of this
26 chapter.
- 27 8. Except for provisions included pursuant to subsection 1, any provision of the
28 articles may:
- 29 a. Be made dependent upon facts ascertainable outside the articles, but only if
30 the manner in which the facts operate upon the provision is clearly and
31 expressly set forth in the articles; and

- 1 b. Incorporate by reference some or all of the terms of any agreements,
2 contracts, or other arrangements entered into by the limited liability company,
3 but only if the limited liability company retains at its principal executive office a
4 copy of the agreements, contracts, or other arrangements or the portions
5 incorporated by reference.

6 **SECTION 41. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-32-10. Limited liability company name.**

- 9 1. The limited liability company name:
- 10 a. Must be in the English language or in any other language expressed in
11 English letters or characters;
- 12 b. Must contain the words "limited liability company", or must contain the
13 abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation
14 may be used interchangeably for all purposes authorized by this chapter,
15 including real estate matters, contracts, and filings with the secretary of state;
- 16 c. May not contain the word "corporation", "incorporated", "limited partnership",
17 "limited liability partnership", "limited liability limited partnership", or any
18 abbreviation of these words;
- 19 d. May not contain a word or phrase that indicates or implies that the limited
20 liability company:
- 21 (1) Is organized for a purpose other than:
- 22 (a) A lawful business purpose for which a limited liability company
23 may be organized under this chapter; or
- 24 (b) For a purpose stated in its articles of organization; or
- 25 (2) May not be organized under this chapter; and
- 26 e. May not be the same as, or deceptively similar to:
- 27 (1) The name, whether foreign and authorized to do business in this state
28 or domestic, unless there is filed with the articles a record which
29 complies with subsection 3, of:
- 30 (a) Another limited liability company;
- 31 (b) A corporation;

- 1 (c) A limited partnership;
- 2 (d) A limited liability partnership; or
- 3 (e) A limited liability limited partnership;
- 4 (2) A name, the right of which is, at the time of organization, reserved in
- 5 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
- 6 45-10.2-11, 45-13-04.2, or 45-22-05;
- 7 (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 8 (4) A trade name registered in the manner provided in chapter 47-25.
- 9 2. The secretary of state shall determine whether a limited liability company name is
- 10 deceptively similar to another name for purposes of this chapter.
- 11 3. If the secretary of state determines that a limited liability company name is
- 12 deceptively similar to another name for purposes of this chapter, then the limited
- 13 liability company name may not be used unless there is filed with the articles:
- 14 a. The written consent of the holder of the rights to the name to which the
- 15 proposed name has been determined to be deceptively similar; or
- 16 b. A certified copy of a judgment of a court in this state establishing the prior
- 17 right of the applicant to the use of the name in this state.
- 18 4. This section and section 10-32-11 do not:
- 19 a. Abrogate or limit:
- 20 (1) The law of unfair competition or unfair practices;
- 21 (2) Chapter 47-25;
- 22 (3) The laws of the United States with respect to the right to acquire and
- 23 protect copyrights, trade names, trademarks, service names, and
- 24 service marks; or
- 25 (4) Any other rights to the exclusive use of names or symbols.
- 26 b. Derogate the common law or the principles of equity.
- 27 5. A domestic or foreign limited liability company that is the surviving organization in a
- 28 merger with one or more other organizations, or that acquires by sale, lease, or
- 29 other disposition to or exchange with an organization all or substantially all of the
- 30 assets of another organization including its name, may have the same name,

- 1 subject to the requirements of subsection 1, as that used in this state by any of the
2 other organizations, if the organization whose name is sought to be used:
- 3 a. Was organized, incorporated, formed, or registered under the laws of this
4 state;
 - 5 b. Is authorized to transact business or conduct activities in this state;
 - 6 c. Holds a reserved name in the manner provided in section 10-19.1-14,
7 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - 8 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
9 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 10 6. The use of a name by a limited liability company in violation of this section does
11 not affect or vitiate its limited liability company existence. However, a court in this
12 state may, upon application of the state or of an interested or affected person,
13 enjoin the limited liability company from doing business under a name assumed in
14 violation of this section, although its articles of organization may have been filed
15 with the secretary of state and a certificate of organization issued.
- 16 7. A limited liability company whose period of existence has expired or that is
17 involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may
18 reacquire the right to use that name by refiling articles of organization pursuant to
19 section 10-32-20, unless the name has been adopted for use or reserved by
20 another person, in which case the filing will be rejected unless the filing is
21 accompanied by a written consent or judgment pursuant to subsection 2. A limited
22 liability company that cannot reacquire the use of its limited liability company name
23 shall adopt a new limited liability company name which complies with the
24 provisions of this section:
- 25 a. By refiling the articles of organization pursuant to section 10-32-07;
 - 26 b. By amending pursuant to section 10-32-18; or
 - 27 c. By reinstating pursuant to section 10-32-149.
- 28 8. Subject to section 10-32-136, this section applies to any foreign limited liability
29 company transacting business in this state, having a certificate of authority to
30 transact business in this state, or applying for a certificate of authority.

1 9. An amendment that only changes the name of the limited liability company may be
2 authorized by a resolution approved by the board and may, but need not, be
3 submitted to and approved by the members as provided in section 10-32-15.

4 **SECTION 42. AMENDMENT.** Section 10-32-27 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **10-32-27. Transaction of business outside North Dakota.** By enacting this chapter
7 the legislative assembly recognizes the limited liability company as an important and
8 constructive form of business organization. The legislative assembly understands that:

- 9 1. Businesses organized under or governed by this chapter will often transact
10 business in other states;
- 11 2. For businesses organized under or governed by this chapter to function effectively
12 and for this chapter to be a useful enactment, this chapter must be accorded the
13 same comity and full faith and credit that states typically accord to each other's
14 corporate laws; and
- 15 3. Specifically, it is essential that other states recognize both the legal existence of
16 limited liability companies ~~formed~~ organized under or governed by this chapter and
17 the legal status of all members of these limited liability companies.

18 The legislative assembly therefore specifically seeks that, subject to any reasonable
19 registration requirements, other states extend to this chapter the same full faith and credit
20 under section 1 of article IV of the Constitution of the United States, and the same comity, that
21 North Dakota extends to statutes that other states enact to provide for the establishment and
22 operation of business organizations.

23 **SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-37 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota,~~
26 ~~a member of a limited liability company has the preemptive rights provided in this~~
27 ~~section, unless~~ Unless denied or limited in the articles of organization, in a
28 member-control agreement, or by the board pursuant to subdivision b of
29 subsection 5 of section 10-32-56, a member of a limited liability company has the
30 preemptive rights provided in this section.

1 **SECTION 44.** Section 10-32-42.1 of the North Dakota Century Code is created and
2 enacted as follows:

3 **10-32-42.1. Contractual requirement to submit matter to members.** A limited
4 liability company may agree to submit a matter to its members whether or not the board
5 determines, at any time after approving the matter, that the matter is no longer advisable and
6 recommends that the members reject it.

7 **SECTION 45. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-32-43. Action Member action without a meeting by the members.** An action
10 required or permitted to be taken at a meeting of the members may be taken without a meeting
11 by written action signed, or consented to by authenticated electronic communication, by all of
12 the members entitled to vote on that action.

13 1. If the articles or a member-control agreement so provide, any action may be taken
14 by written action signed, or consented to by authenticated electronic
15 communication, by the members who own voting power equal to the voting power
16 that would be required to take the same action at a meeting of the members at
17 which all members were present.

18 a. However, in no event may written action be taken by members holding less
19 than a majority of the voting power of all membership interests entitled to vote
20 on the action.

21 b. After the adoption of the initial articles or the first making of a member-control
22 agreement, an amendment to the articles or to a member-control agreement
23 to permit written action to be taken by less than all members requires the
24 approval of all the members entitled to vote on the amendment.

25 2. The written action is effective when signed, or consented to by authenticated
26 electronic communication, by the required members, unless a different effective
27 time is provided in the written action.

28 a. When written action is permitted to be taken by less than all members, all
29 members must be notified immediately of its text and effective date.

30 b. Failure to provide the notice does not invalidate the written action.

1 c. A member who does not sign or consent to the written action has no liability
2 for the action or actions taken by the written action.

3 3. When this chapter requires or permits a certificate concerning an action to be filed
4 with the secretary of state, the managers signing the certificate must so indicate if
5 the action was taken under this section.

6 **SECTION 46. AMENDMENT.** Subsection 1 of section 10-32-76 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 1. Unless otherwise provided in the articles or a member-control agreement and
9 subject to subsection 2, governors are elected by a plurality of the voting power of
10 the membership interests present and entitled to vote on the election of governors
11 at a meeting at which a quorum is present.

12 **SECTION 47.** A new subsection to section 10-32-85 of the North Dakota Century Code
13 is created and enacted as follows:

14 Unless otherwise provided in the articles, the bylaws, or the resolution of the board
15 establishing the committee, a committee may create one or more subcommittees,
16 each consisting of one or more members of the committee, and may delegate to a
17 subcommittee any or all of the authority of the committee. In this chapter, unless
18 the language or the context clearly indicates that a different meaning is intended:

- 19 a. Any reference to a committee is deemed to include a subcommittee; and
20 b. Any reference to a committee member is deemed to include a subcommittee
21 member.

22 **SECTION 48. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 2. Except as otherwise provided in the articles ~~or~~, the bylaws, or a member-control
25 agreement, a manager may be removed at any time, with or without cause, by a
26 resolution approved by the affirmative vote of a majority of the governors present,
27 ~~subject to the provisions of a member-control agreement. The removal~~ The
28 articles of organization, the bylaws, or a member-control agreement may provide
29 other manners of removing a manager. Removal is without prejudice to any
30 contractual rights of the ~~officer~~ manager.

1 **SECTION 49. AMENDMENT.** Section 10-32-100 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-32-100. Merger - Exchange - Transfer.**

- 4 1. With or without a business purpose, a limited liability company may merge:
- 5 a. ~~With another limited liability company pursuant to a plan of merger approved~~
6 ~~in the manner provided in sections 10-32-101 through 10-32-106.~~
- 7 b. ~~With a corporation under a plan of merger approved in the manner provided~~
8 ~~in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.~~
- 9 e. ~~With any foreign corporation or foreign limited liability company pursuant to a~~
10 ~~plan of merger approved in the manner provided in section 10-32-107 with~~
11 ~~another domestic or foreign organization under a plan of merger approved in~~
12 ~~the manner provided in this section and sections 10-32-101 through~~
13 ~~10-32-106 and in the manner provided in its governing statutes in the case of~~
14 ~~any other organization.~~
- 15 2. With respect to an exchange:
- 16 a. A limited liability company may acquire all of the ownership interests of one or
17 more classes or series of another ~~limited liability company~~ domestic or foreign
18 organization pursuant to a plan of exchange approved in the manner provided
19 in sections 10-32-101 through 10-32-106 in the case of a domestic limited
20 liability company and in the manner provided in its governing statutes in the
21 case of any other organization.
- 22 b. ~~A limited liability company may acquire all of the ownership interests of one or~~
23 ~~more classes or series of a corporation pursuant to a plan of exchange~~
24 ~~approved in the manner provided in sections 10-32-101 through 10-32-107~~
25 ~~and in chapter 10-19.1.~~
- 26 e. ~~A corporation~~ Another domestic or foreign organization may acquire all of the
27 ~~ownership~~ membership interests of one or more classes or series of a limited
28 liability company pursuant to a plan of exchange approved in the manner
29 provided in this section and in sections 10-32-101 through 10-32-106
30 ~~10-32-107 and in chapter 10-19.1~~ the manner provided in its governing
31 statute in the case of any other organization.

1 d. ~~A foreign corporation or foreign limited liability company may acquire all of the~~
2 ~~ownership interests of one or more classes or series of a limited liability~~
3 ~~company pursuant to a plan of exchange approved in the manner provided in~~
4 ~~section 10-32-107.~~

5 3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or
6 substantially all of the limited liability company's property and assets in the manner
7 provided in section 10-32-108.

8 4. A limited liability company may participate in a merger or exchange only as
9 permitted by this section and sections 10-32-101 through 10-32-107.

10 **SECTION 50. AMENDMENT.** Subsection 1 of section 10-32-101 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. A plan of merger or exchange must contain:

13 a. The name of the limited liability company and of each other constituent
14 organization proposing to merge or participate in an exchange, and:

15 (1) In the case of a merger, the name of the surviving organization, ~~which~~
16 ~~may be the limited liability company or the other constituent~~
17 ~~organization;~~ or

18 (2) In the case of an exchange, the name of the acquiring organization;

19 b. The terms and conditions of the proposed merger or exchange;

20 c. The manner and basis for converting or exchanging ownership interests:

21 (1) In the case of a merger, the manner and basis of converting the
22 ownership interests of the constituent organizations into securities of
23 the surviving organization or of any other organization or, in whole or in
24 part, into money or other property; or

25 (2) In the case of an exchange, the manner and basis of exchanging the
26 ownership interests to be acquired for securities of the acquiring
27 organization or any other organization or, in whole or in part, for money
28 or other property;

29 d. In the case of a merger, a statement of any amendments to the articles of
30 ~~organization or articles of incorporation, as the case may be,~~ of the surviving
31 organization proposed as part of the merger; and

- 1 e. Any other provisions with respect to the proposed merger that are considered
2 necessary or desirable.

3 **SECTION 51. AMENDMENT.** Section 10-32-102 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **10-32-102. Plan approval.**

- 6 1. A resolution containing the plan of merger or exchange must be approved by the
7 governing ~~board~~ body as required by section ~~10-19.1-46~~ or 10-32-83 in the case of
8 a domestic limited liability company or by its governing statute in the case of each
9 ~~constituent~~ any other organization and must then be submitted at a regular or
10 special meeting to the owners of each constituent organization in the case of a
11 plan of merger; and the constituent organization whose ownership interests will be
12 acquired by the acquiring constituent organization in the exchange, in the case of
13 an exchange. ~~The plan of merger or exchange may require that it be submitted to~~
14 ~~the owners whether or not the governing board determines at any time after the~~
15 ~~governing board's initial approval of the plan that the plan is no longer advisable~~
16 ~~and recommends that the owners reject it.~~ If owners owning any class or series of
17 ownership interests in a constituent organization are entitled to vote on the plan of
18 merger or exchange pursuant to this subsection, then written notice must be given
19 to every owner of that constituent organization, whether or not entitled to vote at
20 the meeting, not less than fourteen days nor more than sixty days before the
21 meeting, in the manner provided in section ~~10-19.1-73~~ for notice of meetings of
22 ~~shareholders in the case of a corporation and in the manner provided in section~~
23 10-32-40 for notice of meetings of members in the case of a limited liability
24 company, or in the manner provided in its governing statute for any other
25 organization. The written notice must state that a purpose of the meeting is to
26 consider the proposed plan of merger or exchange. A copy or short description of
27 the plan of merger or exchange must be included in or enclosed with the notice.
- 28 2. At the meeting, a vote of the owners must be taken on the proposed plan. The
29 plan of merger is adopted when approved by the affirmative vote of the owners of
30 a majority of the voting power of all ownership interests entitled to vote as required
31 by section ~~10-19.1-74~~ or 10-32-42 in the case of a domestic limited liability

1 company, or in the manner provided in its governing statute in the case of any
2 other organization. Except as provided in subsection 3 or a member-control
3 agreement, a class or series of ownership interests of the constituent organization
4 is entitled to vote as a class or series if any provision of the plan would, if
5 contained in a proposed amendment to the articles ~~of organization~~ or a
6 member-control agreement, entitle the class or series of ownership interests to
7 vote as a class or series and, in the case of an exchange, if the class or series is
8 included in the exchange.

9 3. A class or series of ownership interests of the constituent organization is not
10 entitled to vote as a class or series ~~solely because the plan of merger or exchange~~
11 ~~effects a cancellation or exchange of the ownership interests of the class or series~~
12 if the plan of merger or exchange effects a cancellation or exchange of all
13 ownership interests of the constituent organization of all classes and series that
14 are existing immediately before the merger or exchange and owners of ownership
15 interests of that class or series are entitled to obtain payment for the fair value of
16 their ownership interests under section ~~10-19-1-87 or 10-32-55,~~ as in the case of a
17 domestic limited liability company, or in the manner provided in the governing
18 statute in the case may be of any other organization, in the event of the merger or
19 exchange.

20 4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a
21 meeting of owners of a surviving constituent organization is not required if:

- 22 a. The articles will not be amended in the transaction;
- 23 b. Each owner of ownership interests in the constituent organization which were
24 outstanding immediately before the effective ~~time~~ date of the transaction will
25 hold the same number of ownership interests with identical rights immediately
26 after that ~~time~~ date;
- 27 c. The voting power of the outstanding ownership interests of the constituent
28 organization entitled to vote immediately after the merger, plus the voting
29 power of the outstanding ownership interests of the constituent organization
30 entitled to vote issuable on conversion of or on the exercise of rights to
31 purchase securities issued in the transaction, will not exceed by more than

1 twenty percent the voting power of the outstanding ownership interests of the
2 constituent organization entitled to vote immediately before the transaction;
3 and

4 d. The number of participating ownership interests of the constituent
5 organization immediately after the merger, plus the number of participating
6 ownership interests of the constituent organization issuable on conversion, or
7 on the exercise of rights to purchase, securities issued in the transaction, will
8 not exceed by more than twenty percent the number of participating
9 ownership interests of the constituent organization immediately before the
10 transaction. "Participating ownership interests" are outstanding ownership
11 interests of the constituent organization which entitle the ownership interests
12 owners to participate without limitation in distributions by the constituent
13 organization.

14 5. If the merger or exchange is with ~~a corporation~~ an organization other than a limited
15 liability company, then the plan of merger or exchange must also be approved in
16 the manner provided in ~~chapter 10-19.4~~ its governing statute.

17 **SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-103 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. Upon receiving the approval required by section 10-32-102, articles of merger
20 must be prepared which contain:

- 21 a. The plan of merger; and
22 b. A statement that the plan has been approved by each constituent
23 organization ~~pursuant to chapter 10-19.4~~ or in the manner provided in this
24 chapter in the case of a domestic limited liability company, or in the manner
25 provided in its governing statute in the case of any other organization.

26 **SECTION 53. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **10-32-104. Merger of subsidiary into parent.**

29 1. A If either the parent or the subsidiary is a domestic organization, then a parent
30 that is a domestic or foreign organization owning at least ninety percent of the
31 outstanding ownership interests of each class and series of a subsidiary that is a

- 1 domestic or foreign organization directly, or indirectly through related organizations
2 other than classes or series that absent this section would otherwise not be
3 entitled to vote on the merger:
- 4 a. May merge the subsidiary into the parent, or may merge the subsidiary into
5 any other subsidiary at least ninety percent of the outstanding ownership
6 interest of each class and series of which is owned by the parent directly or
7 indirectly through related organizations other than classes or series that,
8 absent this section, would otherwise not be entitled to vote on the merger,
9 without a vote of the owners of the parent or any subsidiary; or
- 10 b. May merge the parent, or the parent and one or more subsidiaries, into one of
11 the subsidiaries under this section.
- 12 2. A resolution approved by the ~~directors of the parent as required by section~~
13 ~~40-19.1-46~~ or by the governors of the parent present as required by section
14 10-32-83 in the case of a domestic limited liability company, or by the present
15 members of the governing body of the parent as required by its governing statute
16 in the case of any other organization must set forth a plan of merger which
17 contains:
- 18 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
19 name of the surviving constituent organization;
- 20 b. The manner and basis of converting the ownership interests of the subsidiary
21 into ownership interests of the parent, the subsidiary, or of another
22 organization or, in whole or in part, into money or other property;
- 23 c. If the parent is a constituent organization but is not the surviving constituent
24 organization in the merger, then a provision for the pro rata issuance of
25 ownership interests of the surviving constituent organization to the owners of
26 ownership interests of the parent on surrender of any ownership interests of
27 the parent; and
- 28 d. If the surviving constituent organization is a subsidiary, then a statement of
29 any amendments to the articles of the surviving constituent organization that
30 will be part of the merger.
- 31 3. ~~#~~ Notwithstanding subsection 1:

- 1 a. If the parent is a domestic limited liability company and the conditions of
2 subsection 4 of section 10-32-102 are not met with respect to the parent, then
3 the resolution is not effective unless it is approved by the affirmative vote of
4 the holders of a majority of the voting power of all membership interests of the
5 parent entitled to vote at a regular or special meeting held in accordance with
6 section 10-32-102; and
- 7 b. If the parent is a domestic or foreign organization and is not the surviving
8 organization in the merger, then the resolution is not effective unless it is
9 approved in accordance with the governing statute of the parent.
- 10 4. Notwithstanding subsection 3, if the parent is a constituent organization and is the
11 surviving organization in the merger, it may change its limited liability company
12 name, without a vote of its owners, by the inclusion of a provision to that effect in
13 the resolution of merger setting forth the plan of merger that is approved by the
14 affirmative vote of the board members of the parent present. Upon the effective
15 date of the merger, the name of the parent must be changed.
- 16 ~~4. If the parent is a constituent organization but is not the surviving constituent~~
17 ~~organization in a merger, the resolution is not effective unless the resolution is also~~
18 ~~approved by the affirmative vote of the holders of a majority of the voting power of~~
19 ~~all ownership interests of the parent entitled to vote at a regular or special meeting~~
20 ~~held in accordance with section 10-19.1-98 if the parent is a corporation, section~~
21 ~~10-32-102 if the parent is a limited liability company, or in accordance with the laws~~
22 ~~of the jurisdiction under which the parent is incorporated or organized if the parent~~
23 ~~is a foreign corporation or foreign limited liability company.~~
- 24 5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action,
25 including a copy of the plan of merger must be given to each owner, other than the
26 parent, of each subsidiary that is a constituent organization to the merger before,
27 or within ten days after, the effective date of the merger.
- 28 6. Articles of merger must be prepared which contain:
- 29 a. The plan of merger;
- 30 b. The number of outstanding ownership interests of each class and series of
31 the subsidiary that is a constituent organization in the merger, other than the

- 1 classes or series that, absent this section, would otherwise not be entitled to
2 vote on the merger, and the number of ownership interests of each class and
3 series of the subsidiary or subsidiaries, other than the classes or series that,
4 absent this section, would otherwise not be entitled to vote on the merger,
5 owned by the parent directly or indirectly, through related ~~constituent~~
6 organizations; and
- 7 c. A statement that the plan of merger has been approved by the parent under
8 this section.
- 9 7. The articles of merger must be signed on behalf of the parent and filed with the
10 secretary of state, together with the fees provided in section 10-32-150.
- 11 8. The secretary of state shall issue a certificate of merger to the surviving constituent
12 organization in the merger or the surviving constituent organization's legal
13 representative. The certificate must contain the effective date of merger.
- 14 9. If all of the ownership interests of one or more domestic subsidiaries that are a
15 constituent organization to a merger under this section are not owned by the
16 parent directly, or indirectly through related constituent organizations, immediately
17 before the merger, then the owners of each domestic subsidiary which is either a
18 domestic corporation or a domestic limited liability company have dissenters' rights
19 under section 10-19.1-87 or under section 10-32-54, without regard to
20 subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and
21 under section 10-19.1-88 or 10-32-55.
- 22 a. If the parent is a constituent organization but is not the surviving constituent
23 organization in the merger, and the articles of incorporation or articles of
24 organization of the surviving constituent organization immediately after the
25 merger differ from the articles of incorporation or articles of organization of the
26 parent immediately before the merger in a manner that would entitle an owner
27 of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or
28 under subdivision a of subsection 1 of section 10-32-54 if the articles of
29 incorporation or articles of organization of the surviving constituent
30 organization constitute an amendment to the articles of incorporation or
31 articles of organization of the parent, then that owner of the parent has

1 dissenters' rights as provided under section 10-19.1-87 or under section
2 10-32-54.

3 **b.** Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do
4 not apply to any merger affected under this section.

5 10. A merger among a parent and one or more subsidiaries or among two or more
6 subsidiaries of a parent may be accomplished under sections 10-32-101 through
7 10-32-103 instead of this section, in which case this section does not apply.

8 **SECTION 54. AMENDMENT.** Section 10-32-105 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-32-105. Abandonment of plan of merger.**

11 1. After a plan of merger is approved by the owners entitled to vote on the approval of
12 the plan as provided in section 10-32-102, and before the effective date of the
13 plan, the plan of merger may be abandoned:

14 a. With respect to approval of the abandonment:

15 (1) If the owners of ownership interests of each of the constituent
16 organizations entitled to vote on the approval of the plan as provided in
17 section 10-32-102 have approved the abandonment at a meeting by
18 the owners of a majority of the voting power of the ownership interests
19 entitled to vote as required by section ~~40-19.1-74~~ or 10-32-42 in the
20 case of a domestic limited liability company, or by its governing statute
21 in the case of any other organization;

22 (2) If the owners of a constituent organization are not entitled to vote on
23 the approval of the plan under section 10-32-102, then if the governing
24 board body of that constituent organization has approved the
25 abandonment by the board as required by section ~~40-19.1-46~~ or
26 10-32-83 in the case of a domestic limited liability company, or by its
27 governing statute in the case of any other organization; and

28 (3) If the merger or exchange is with a foreign ~~corporation or foreign limited~~
29 ~~liability company~~ organization, then if abandonment is approved in the
30 manner ~~required by the laws of the jurisdiction under which the~~

- 1 ~~corporation is incorporated or the limited liability company is organized~~
2 provided in its governing statute;
- 3 b. If the plan itself provides for abandonment and all conditions for abandonment
4 set forth in the plan are met; or
- 5 c. Pursuant to subsection 2.
- 6 2. If articles of merger have not been filed with the secretary of state and the plan is
7 to be abandoned, or if a plan of exchange is to be abandoned before the effective
8 date of the plan, then a resolution by the governing ~~board~~ body of any constituent
9 organization abandoning the plan of merger or exchange may be approved by the
10 ~~board~~ governing body as required by section ~~10-19-1-46~~ or 10-32-83 in the case of
11 a domestic limited liability company, or by its governing statute in the case of any
12 other organization subject to the contract rights of any other person under the plan.
- 13 3. If articles of merger have been filed with the secretary of state, but have not yet
14 become effective, the constituent organizations, in the case of abandonment under
15 subdivision a of subsection 1, then the constituent organizations or any one
16 constituent organization, in the case of abandonment under subdivision b of
17 subsection 1, or the abandoning constituent organization in the case of
18 abandonment under subsection 2, shall file with the secretary of state together with
19 the fees provided in section 10-32-150, articles of abandonment that contain:
- 20 a. The names of the constituent organizations;
21 b. The provision of this section under which the plan is abandoned; and
22 c. The text of the resolution abandoning the plan.
- 23 4. If the certificate of merger has been issued, then the governing ~~board~~ body shall
24 surrender the certificate to the secretary of state upon filing the articles of
25 abandonment.

26 **SECTION 55. AMENDMENT.** Subsections 2 and 3 of section 10-32-106 of the North
27 Dakota Century Code are amended and reenacted as follows:

- 28 2. When a merger becomes effective:
- 29 a. The constituent organizations become a single entity, the surviving
30 ~~corporation, or surviving limited liability company~~ organization;

- 1 b. The separate existence of all constituent organizations except the surviving
2 constituent organization ceases;
- 3 c. As to any limited liability company that was a constituent organization and is
4 not the surviving constituent organization, the articles of merger serve as the
5 articles of termination and, unless previously filed, the notice of dissolution;
- 6 d. ~~As to rights, privileges, immunities, powers, duties, and liabilities:~~
- 7 (1) ~~If the surviving organization is a limited liability company, the~~ The
8 surviving ~~limited liability company~~ organization has all the rights,
9 privileges, immunities, and powers, and is subject to all the duties and
10 liabilities of a ~~limited liability company organized under this chapter; and~~
- 11 (2) ~~If the surviving organization is a corporation, the surviving corporation~~
12 ~~has all the rights, privileges, immunities, and powers, and is subject to~~
13 ~~all the duties and liabilities of a corporation~~ the specified organization
14 under its governing statute;
- 15 e. The surviving constituent organization, ~~whether a limited liability company or~~
16 ~~a domestic or foreign corporation,~~ possesses all the rights, privileges,
17 immunities, and franchises, of a public as well as of a private nature, of each
18 of the constituent organizations.
- 19 (1) All property, real, personal, and mixed, and all debts due on any
20 account, including subscriptions to ~~shares~~ ownership interests and
21 contribution agreements, as the case may be, and all other choses in
22 action, and every other interest of or belonging to or due to each of the
23 constituent organizations vests in the surviving constituent organization
24 without any further act or deed.
- 25 (2) Confirmatory deeds, assignments, or similar instruments to accomplish
26 that vesting may be signed and delivered at any time in the name of a
27 constituent organization by its current officers ~~or~~ managers, as the
28 ~~case may be~~ or governing body, or, if the organization no longer exists,
29 by its last officers ~~or~~ managers, as the case may be or governing
30 body.

- 1 (3) The title to any real estate or any interest in real estate vested in any of
2 the constituent organizations does not revert nor in any way become
3 impaired by reason of the merger;
- 4 f. The surviving constituent organization is responsible and liable for all the
5 liabilities and obligations of each of the constituent organizations.
- 6 (1) A claim of or against or a pending proceeding by or against a
7 constituent organization may be prosecuted as if the merger had not
8 taken place, or the surviving organization may be substituted in the
9 place of the constituent organization.
- 10 (2) Neither the rights of creditors nor any liens upon the property of a
11 constituent organization are impaired by the merger; and
- 12 g. The articles of ~~organization or articles of incorporation, as the case may be,~~ of
13 the surviving organization are considered to be amended to the extent that
14 changes in its articles, if any, are contained in the plan of merger.
- 15 3. When a merger becomes effective, the ownership interests to be converted or
16 exchanged under the terms of the plan cease to exist in the case of a merger, or
17 are considered to be exchanged in the case of an exchange. The owners of those
18 ownership interests are entitled only to the securities, money, or other property into
19 which those ownership interests have been converted or for which those
20 ownership interests have been exchanged in accordance with the plan, subject to
21 any dissenters' rights under section 10-19.1-87 or 10-32-54,~~as the case may be.~~

22 **SECTION 56. AMENDMENT.** Section 10-32-106.1 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **10-32-106.1. Continuance of limited liability company authority.** When an act or
25 record is considered necessary or appropriate to evidence the vesting of property or other
26 rights in the single limited liability company, the persons with authority to do so under the
27 articles of, bylaws, or member-control agreement of each constituent organization shall do the
28 act or sign and deliver the record and for this purpose, the existence of the constituent
29 organizations and the authority of those persons are continued.

30 **SECTION 57. AMENDMENT.** Section 10-32-107 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **10-32-107. Merger or exchange with foreign limited liability company or foreign**
2 **corporation.**

- 3 1. A limited liability company may merge with, including a merger pursuant to section
4 10-32-104, or participate in an exchange with a foreign ~~corporation or a foreign~~
5 ~~limited liability company~~ organization by following the procedures set forth in this
6 section, if:
- 7 a. With respect to a merger, the merger is permitted by ~~the laws of the~~
8 ~~jurisdiction under which the foreign corporation or foreign limited liability~~
9 ~~company is incorporated or organized~~ its governing statute; and
- 10 b. With respect to an exchange, the constituent organization of which the
11 ownership interests will be acquired is ~~a limited liability company or a~~
12 ~~corporation~~ an organization, regardless of whether the exchange is permitted
13 by ~~the laws of the jurisdiction under which the foreign corporation or foreign~~
14 ~~limited liability company is incorporated or organized~~ its governing statute.
- 15 2. Each limited liability company shall comply with the provisions of this section and
16 sections 10-32-100 through 10-32-106 with respect to the merger or exchange of
17 ownership interests of organizations and each foreign ~~corporation or foreign limited~~
18 ~~liability company~~ organization shall comply with the applicable provisions of the
19 ~~laws of the jurisdiction under which the foreign corporation or foreign limited liability~~
20 ~~company is incorporated or organized or under which the foreign corporation or~~
21 ~~foreign limited liability company is governed~~ its governing statute.
- 22 3. If the surviving organization in a merger will be a domestic limited liability
23 company, then the surviving organization shall comply with all the provisions of this
24 chapter.
- 25 4. If the surviving organization in a merger will be a foreign ~~corporation or foreign~~
26 ~~limited liability company~~ organization and will transact business in this state, then
27 the surviving organization shall comply, ~~as the case may be,~~ with ~~the provisions of~~
28 ~~chapter 10-19.1 with respect to foreign corporations or with the provisions of this~~
29 ~~chapter with respect to foreign limited liability companies~~ its governing statute. In
30 every case, the surviving ~~foreign corporation or foreign limited liability company~~
31 organization shall file with the secretary of state:

- 1 a. An agreement that the surviving organization may be served with process in
2 this state in a proceeding for the enforcement of an obligation of a constituent
3 organization and in a proceeding for the enforcement of the rights of a
4 dissenting owner of an ownership interest of a constituent organization
5 against the surviving foreign ~~corporation or foreign limited liability company~~
6 organization;
- 7 b. An irrevocable appointment of the secretary of state as the ~~surviving~~
8 ~~organization's agent~~ of the surviving organization to accept service of process
9 in any proceeding, and an address to which process may be forwarded; and
- 10 c. An agreement that the surviving organization promptly will pay to the
11 dissenting owners of ownership interests of each constituent ~~limited liability~~
12 ~~company and constituent corporation~~ organization the amount, if any, to
13 which the dissenting owners are entitled under ~~section 10-19.1-88 or~~
14 ~~10-32-55~~ its governing statute.

15 **SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-108 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 4. The transferee is liable for the debts, obligations, and liabilities of the transferor
18 only to the extent provided in the contract or agreement between the transferee
19 and the transferor or to the extent provided by this chapter or other statutes of this
20 state. A disposition of all or substantially all of the property and assets of the
21 limited liability company under this section is not considered to be a merger or a
22 de facto merger pursuant to this chapter or otherwise. The transferee shall not be
23 liable solely because it is deemed to be a continuation of the transferor.

24 **SECTION 59. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise
27 requires:

- 28 1. "Activity" or "activities" means, in a corporation organized under this chapter, the
29 functional equivalent of "business" in a corporation organized under chapter
30 10-19.1.
- 31 2. "Address" means:

- 1 a. In the case of a registered office or principal executive office, the mailing
- 2 address, including a zip code, of the actual office location which may not be
- 3 only a post-office box; and
- 4 b. In any other case, the mailing address, including a zip code.
- 5 3. "Articles" means:
- 6 a. In the case of a corporation incorporated under or governed by this chapter,
- 7 articles of incorporation, articles of amendment, a resolution of election to
- 8 become governed by this chapter, a statement of change of registered office,
- 9 registered agent, or name of registered agent, articles of merger, articles of
- 10 consolidation, articles of abandonment, articles of dissolution, and any annual
- 11 report in which a registered office or registered agent has been established or
- 12 changed.
- 13 b. In the case of a foreign corporation, the term includes all records serving a
- 14 similar function required to be filed with the secretary of state or other officer
- 15 of the ~~corporation's~~ state of incorporation of the foreign corporation.
- 16 4. "Authenticated electronic communication" means:
- 17 a. That the electronic communication is delivered:
- 18 (1) To the principal place of activity of the corporation; or
- 19 (2) To an officer or agent of the corporation authorized by the corporation
- 20 to receive the electronic communication; and
- 21 b. That the electronic communication sets forth information from which the
- 22 corporation can reasonably conclude that the electronic communication was
- 23 sent by the purported sender.
- 24 5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
- 25 6. "Board" means the board of directors of a corporation.
- 26 7. "Board member" means an individual serving on the board.
- 27 8. "Bylaws" means the code adopted for the regulation or management of the internal
- 28 affairs of a corporation, regardless of how designated.
- 29 9. "Corporation" means a corporation, other than a foreign corporation, that is
- 30 incorporated under or governed by this chapter.
- 31 10. "Director" means a member of the board.

- 1 11. "Domestic organization" means an organization created under the laws of this
2 state.
- 3 12. "Electronic" means relating to technology having electrical, digital, magnetic,
4 wireless, optical, electromagnetic, or similar capabilities.
- 5 13. "Electronic communication" means any form of communication, not directly
6 involving the physical transmission of paper:
- 7 a. That creates a record that may be retained, retrieved, and reviewed by a
8 recipient of the communication; and
- 9 b. That may be directly reproduced in paper form by the recipient through an
10 automated process.
- 11 14. "Electronic record" means a record created, generated, sent, communicated,
12 received, or stored by electronic means.
- 13 15. "Electronic signature" means an electronic sound, symbol, or process attached to
14 or logically associated with a record and signed or adopted by a person with the
15 intent to sign the record.
- 16 16. "Filed with the secretary of state" means except as otherwise permitted by law or
17 rule:
- 18 a. That a record meeting the applicable requirements of this chapter, together
19 with the fees provided in section 10-33-140, was delivered or communicated
20 to the secretary of state by a method or medium of communication acceptable
21 by the secretary of state and was determined by the secretary of state to
22 conform to law; and
- 23 b. That the secretary of state did then:
- 24 (1) Record the actual date on which the record was filed, and if different,
25 the effective date of filing; and
- 26 (2) Record the record in the office of the secretary of state.
- 27 17. "Foreign corporation" means a corporation that is formed under laws other than the
28 laws of this state for a purpose for which a corporation may be organized under
29 this chapter.

- 1 18. "Foreign organization" means an organization created under laws other than the
2 laws of this state for a purpose for which an organization may be created under the
3 laws of this state.
- 4 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 5 20. "Intentionally" means the person referred to has a purpose to do or fail to do the
6 act or cause the result specified, or believes the act or failure to act, if successful,
7 will cause that result. A person intentionally violates a statute:
- 8 a. If the person intentionally does the act or causes the result prohibited by the
9 statute; or
- 10 b. If the person intentionally fails to do the act or cause the result required by the
11 statute, even though the person may not know of the existence or
12 constitutionality of the statute or the scope or meaning of the terms used in
13 the statute.
- 14 21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
15 from time to time, and successive federal revenue Acts.
- 16 22. "Legal representative" means a person empowered to act for another person,
17 including an agent, manager, officer, partner, or associate of an organization; a
18 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
19 guardian, custodian, or conservator.
- 20 23. "Member" means a person with membership rights in a corporation under its
21 articles or bylaws, regardless of how the person is identified.
- 22 24. "Members with voting rights" means members or a class of members that has
23 voting rights with respect to the purpose or matter involved.
- 24 25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
25 pecuniary gain to any officer, director, or member, other than a member that is a
26 nonprofit organization or subdivision, unit, or agency of the United States or a state
27 or local government.
- 28 26. "Notice":
- 29 a. Is given by a member of a corporation to the corporation or an officer of the
30 corporation:

- 1 (1) When in writing and mailed or delivered to the corporation or the officer
2 at the registered office or principal executive office of the corporation;
3 or
4 (2) When given by a form of electronic communication consented to by the
5 corporation to which the notice is given if by:
6 (a) Facsimile communication, when directed to a telephone number
7 at which the corporation has consented to receive notice.
8 (b) Electronic mail, when directed to an electronic mail address at
9 which the corporation has consented to receive notice.
10 (c) Posting on an electronic network on which the corporation has
11 consented to receive notice, together with separate notice to the
12 corporation of the specific posting, upon the later of:
13 [1] The posting; or
14 [2] The giving of the separate notice.
15 (d) Any other form of electronic communication by which the
16 corporation has consented to receive notice, when directed to the
17 corporation.
- 18 b. Is given, in all other cases:
19 (1) When mailed to the person at an address designated by the person or
20 at the last-known address of the person;
21 (2) When handed to the person;
22 (3) When left at the office of the person with a clerk or other person in
23 charge of the office or:
24 (a) If there is no one in charge, when left in a conspicuous place in
25 the office; or
26 (b) If the office is closed or the person to be notified has no office,
27 when left at the dwelling house or usual place of abode of the
28 person with some person of suitable age and discretion then
29 residing there;
30 (4) When given by a form of electronic communication consented to by the
31 person to whom the notice is given if by:

- 1 (a) Facsimile communication, when directed to a telephone number
2 at which the person has consented to receive notice;
- 3 (b) Electronic mail, when directed to an electronic mail address at
4 which the person has consented to receive notice; or
- 5 (c) Posting on an electronic network on which the person has
6 consented to receive notice, together with separate notice to the
7 person of the specific posting, upon the later of:
8 [1] The posting; or
9 [2] The giving of the separate notice; or
- 10 (5) When the method is fair and reasonable when all of the circumstances
11 are considered.
- 12 c. Is given by mail when deposited in the United States mail with sufficient
13 postage affixed.
- 14 d. Is deemed received when it is given.
- 15 27. "Officer" means an individual who is more than eighteen years of age and who is:
16 a. Elected, appointed, or otherwise designated as an officer by the board or the
17 members; or
18 b. Considered elected as an officer pursuant to section 10-33-52.
- 19 28. "Organization" means:
20 a. Whether domestic or foreign, a corporation, limited liability company,
21 partnership, limited partnership, limited liability partnership, limited liability
22 limited partnership, business trust, or any other person having a governing
23 statute; but
24 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
25 which is incorporated under this chapter or a foreign nonprofit corporation
26 which is incorporated in another jurisdiction.
- 27 29. "Principal executive office" means:
28 a. If the corporation has an elected or appointed president, then an office where
29 the elected or appointed president of the corporation has an office; or
30 b. If the corporation has no elected or appointed president, then the registered
31 office of the corporation.

- 1 30. "Record" means information that is inscribed on a tangible medium or that is stored
2 in an electronic or other medium and is retrievable in perceivable form.
- 3 31. "Registered office" means the place in this state designated in a corporation's
4 articles of incorporation or in a foreign corporation's certificate of authority as the
5 registered office.
- 6 32. "Related organization" means an organization that controls, is controlled by, or is
7 under common control with another organization with control existing if an
8 organization:
- 9 a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership~~
10 ~~interests, or other~~ ownership interests of another organization;
- 11 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
12 more of the voting members of the governing body of another organization; or
- 13 c. Has the power, directly or indirectly, to direct or cause the direction of the
14 management and policies of another organization, whether through the
15 ownership of voting interests, by contract, or otherwise.
- 16 33. "Remote communication" means communication via electronic communication,
17 conference telephone, videoconference, the internet, or such other means by
18 which persons not physically present in the same location may communicate with
19 each other on a substantially simultaneous basis.
- 20 34. "Signed" means:
- 21 a. That the signature of a person, which may be a facsimile affixed, engraved,
22 printed, placed, stamped with indelible ink, transmitted by facsimile
23 telecommunication or electronically, or in any other manner reproduced on
24 the record, ~~is placed on a~~ with the present intention to authenticate that
25 ~~record, as provided under section 41-01-14;~~ and
- 26 b. With respect to a record required by this chapter to be filed with the secretary
27 of state, that:
- 28 (1) The record is signed by a person authorized to do so by this chapter,
29 the articles, or bylaws, a resolution approved by the directors as
30 required by section 10-33-42, or the members with voting rights, if any,
31 as required by section 10-33-72; and

- 1 (2) The signature and the record are communicated by a method or
2 medium of communication acceptable by the secretary of state.
- 3 35. "Subsidiary" of a specified ~~corporation~~ organization means:
- 4 a. ~~A corporation or a foreign corporation having more than fifty percent of the~~
5 ~~voting power of its shares entitled to vote for directors owned directly or~~
6 ~~indirectly through related organizations, by the specified corporation; or~~
- 7 b. ~~A limited liability company or a foreign limited liability company having more~~
8 ~~than fifty percent of the voting power of its membership interests entitled to~~
9 ~~vote for governors owned directly, or indirectly through organizations, by the~~
10 ~~specified limited liability company~~ an organization having more than fifty
11 percent of the voting power of its ownership interests entitled to vote for
12 directors, governors, or other members of the governing body of the
13 organization owned directly, or indirectly, through related organizations, by
14 the specified organization.
- 15 36. "Surviving corporation" means the corporation or foreign corporation resulting from
16 a merger which:
- 17 a. May preexist the merger; or
- 18 b. May be created by the merger.
- 19 37. "Vote" includes authorization by written action.
- 20 38. "Written action" means:
- 21 a. A written record signed by all of the persons required to take the action; or
- 22 b. The counterparts of a written record signed by any of the persons taking the
23 action.
- 24 (1) Each counterpart constitutes the action of the persons signing it; and
- 25 (2) All the counterparts are one written action by all of the persons signing
26 them.

27 **SECTION 60.** Section 10-33-01.3 of the North Dakota Century Code is created and
28 enacted as follows:

29 **10-33-01.3. Reservation of legislative right.** The legislative assembly reserves the
30 right to amend or repeal the provisions of this chapter. A corporation incorporated under or
31 governed by this chapter is subject to this reserved right.

1 **SECTION 61. AMENDMENT.** Section 10-33-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-33-06. Articles.**

- 4 1. The articles of incorporation must contain:
- 5 a. The name of the corporation;
- 6 b. The address of the registered office of the corporation and the name of its
7 registered agent at that address;
- 8 c. The name and address of each incorporator;
- 9 d. The effective date of the incorporation:
- 10 (1) If a later date than that on which the certificate of incorporation is
11 issued by the secretary of state; and
- 12 (2) Which may not be later than ninety days after the date on which the
13 certificate of incorporation is issued; and
- 14 e. A statement that the corporation is incorporated under this chapter.
- 15 2. ~~The articles of incorporation may not contain:~~
- 16 a. ~~Any provision limiting the right of cumulative voting as guaranteed by~~
17 ~~section 6 of article XII of the Constitution of North Dakota.~~
- 18 b. ~~Any provision authorizing the issuance of stocks or bonds in violation of~~
19 ~~section 9 of article XII of the Constitution of North Dakota.~~
- 20 3. The following articles govern a corporation unless modified by the articles:
- 21 a. A corporation has a general purpose of engaging in any lawful nonprofit
22 activity as provided in section 10-33-04;
- 23 b. A corporation has perpetual existence and certain powers as provided in
24 section 10-33-21;
- 25 c. The power to initially adopt, amend, or repeal the bylaws is vested in the
26 board as provided in section 10-33-26;
- 27 d. Cumulative voting is prohibited as provided in section 10-33-34;
- 28 e. The affirmative vote of a majority of the directors present is required for an
29 action of the board as provided in section 10-33-42;
- 30 e. f. A written action by the board taken without a meeting must be signed by all
31 directors as provided in section 10-33-43;

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- 1 f. ~~g.~~ Members are of one class as provided in section 10-33-57; and
- 2 g. ~~h.~~ A written action by the members must be signed by all members as provided
- 3 in section 10-33-73.
- 4 4. ~~3.~~ The following provisions govern a corporation unless modified either in the articles
- 5 or bylaws:
- 6 a. A certain method must be used for amending the articles as provided in
- 7 section 10-33-15;
- 8 b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by
- 9 the members as provided in section 10-33-26;
- 10 c. A director holds office for an indefinite term that expires upon the election of a
- 11 successor as provided in section 10-33-30;
- 12 d. The term of a director filling a vacancy expires at the end of the term the
- 13 director is filling as provided in section 10-33-30;
- 14 e. The compensation of directors is fixed by the board as provided in section
- 15 10-33-32;
- 16 f. The method provided in section 10-33-36 or 10-33-37 must be used for
- 17 removal of directors;
- 18 g. The method provided in section 10-33-38 must be used for filling board
- 19 vacancies;
- 20 h. Board meetings must be held at least once per year and if the board fails to
- 21 select a place for a board meeting, it must be held at the principal executive
- 22 office as provided in subsection 1 of section 10-33-39;
- 23 i. A director may call a board meeting, and the notice of the meeting need not
- 24 state the purpose of the meeting as provided in subsection 3 of section
- 25 10-33-39;
- 26 j. A majority of the board is a quorum as provided in section 10-33-41;
- 27 k. The affirmative vote of the majority of directors present is required for board
- 28 action as provided in section 10-33-42;
- 29 l. A committee ~~consist~~:
- 30 (1) Must consist of one or more persons, who need not be directors,
- 31 appointed by the board as provided in section 10-33-44; and

- 1 (2) May create one or more subcommittees, each consisting of one or
2 more members of the committee and may delegate to the
3 subcommittee any or all of the authority of the committee as provided in
4 subsection 7 of section 10-33-44.
- 5 m. Unless the articles or bylaws or a resolution adopted by the board, and not
6 inconsistent with the articles or bylaws, provides otherwise, the officers shall
7 have the duties provided in section 10-33-50;
- 8 n. The method provided in section 10-33-54 must be used for removal of
9 officers;
- 10 o. If not prohibited by the board from doing so, officers may delegate some or all
11 of their duties and powers as provided in section 10-33-55;
- 12 p. A corporation does not have members as provided in section 10-33-57;
- 13 q. The board may determine the consideration required to admit members as
14 provided in section 10-33-57;
- 15 r. All members are entitled to vote and have equal rights and preferences in
16 matters as provided in section 10-33-57;
- 17 s. Memberships are nontransferable except as provided in section 10-33-59;
- 18 t. A corporation with voting members must hold a regular meeting of voting
19 members annually as provided in section 10-33-65;
- 20 u. If a specific minimum notice period has not been fixed by law, then at least
21 five days' notice is required for a meeting of members as provided in section
22 10-33-68;
- 23 v. The board may fix a date up to fifty days before the date of a members'
24 meeting as the date for determination of the members entitled to notice of and
25 entitled to vote at the meeting as provided in section 10-33-68;
- 26 w. Each member has one vote as provided in section 10-33-71;
- 27 x. The affirmative vote of the majority of members with voting rights present and
28 entitled to vote is required for action of the members, unless this chapter or
29 the articles or bylaws require a greater vote or voting by class as provided in
30 section 10-33-72;

- 1 y. Members may take action at a meeting by voice or ballot, by unanimous
2 action without a meeting, by mailed ballot, or by electronic communication as
3 provided in section 10-33-72;
- 4 z. The number of members required for a quorum is ten percent of the members
5 entitled to vote as provided in section 10-33-76;
- 6 aa. The procedures provided in section 10-33-78 govern acceptance of member
7 acts; and
- 8 bb. Indemnification of certain persons is required as provided in section 10-33-84.
- 9 ~~5.~~ 4. The following provisions relating to the management or regulation of the affairs of a
10 corporation may be included in the articles or, except for naming members of the
11 first board, in the bylaws:
- 12 a. The first board of directors may be named in the articles as provided in
13 section 10-33-25;
- 14 b. Additional qualifications for directors may be imposed as provided in section
15 10-33-29;
- 16 c. Terms of directors may be staggered as provided in section 10-33-30;
- 17 d. The date, time, and place of board meetings may be fixed as provided in
18 section 10-33-39;
- 19 e. Additional officers may be designated as provided in section 10-33-49;
- 20 f. Additional powers, rights, duties, and responsibilities may be given to officers
21 as provided in section 10-33-50;
- 22 g. A method for filling vacant offices may be specified as provided in section
23 10-33-54;
- 24 h. Membership criteria and procedures for admission may be established as
25 provided in section 10-33-57;
- 26 i. Membership terms may be fixed as provided in section 10-33-57;
- 27 j. A corporation may issue membership certificates or preferred or common
28 shares as the board deems appropriate as provided in section 10-33-58;
- 29 k. A corporation may levy dues, assessments, or fees on members as provided
30 in section 10-33-60;
- 31 l. A corporation may buy memberships as provided in section 10-33-63;

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- 1 m. A corporation may have delegates with some or all the authority of members
2 as provided in section 10-33-64;
- 3 n. The date, time, and place of regular member meetings or the place of special
4 meetings may be fixed as provided in section 10-33-65;
- 5 o. Certain persons may be authorized to call special meetings of members as
6 provided in section 10-33-66;
- 7 p. Notices of special member meetings may be required to contain certain
8 information as provided in section 10-33-68;
- 9 q. A larger than majority vote may be required for member action as provided in
10 section 10-33-72;
- 11 r. Members may vote by proxy as provided in section 10-33-77; and
- 12 s. Members may enter into voting agreements as provided in section 10-33-79.
- 13 ~~6.~~ 5. The articles may contain other provisions consistent with law relating to the
14 management or regulation of the affairs of the corporation.
- 15 ~~7.~~ 6. It is not necessary to state the corporate powers granted by this chapter in the
16 articles.
- 17 ~~8.~~ 7. If there is a conflict between subsection 2, 3, or 4, ~~or 5~~ and another section of this
18 chapter, then the other section controls.
- 19 ~~9.~~ 8. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action
20 that the bylaws may authorize under this subsection without including the
21 authorization in the bylaws, unless the authorization is required to be in the bylaws
22 by another provision of this chapter.
- 23 9. Except for provisions included pursuant to subsection 1, any provision of the
24 articles may:
- 25 a. Be made dependent upon facts ascertainable outside the articles, but only if
26 the manner in which the facts operate upon the provision is clearly and
27 expressly set forth in the articles; and
- 28 b. Incorporate by reference some or all of the terms of any agreements,
29 contracts, or other arrangements entered into by the corporation, but only if
30 the corporation retains at its principal executive office a copy of the

1 agreements, contracts, or other arrangements or the partners incorporated by
2 reference.

3 **SECTION 62. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **10-33-10. Corporate name.**

6 1. The corporate name:

7 a. Must be in the English language or in any other language expressed in
8 English letters or characters.

9 b. Need not contain the word "company", "corporation", "incorporated", "limited",
10 or an abbreviation of one or more of these words.

11 c. May not contain the words "limited liability company", "limited partnership",
12 "limited liability partnership", "limited liability limited partnership", or any
13 abbreviation of these words.

14 d. May not contain a word or phrase that indicates or implies that the
15 corporation:

16 (1) Is incorporated for a purpose other than:

17 (a) A lawful nonprofit purpose for which a corporation may be
18 incorporated under this chapter; or

19 (b) For a purpose stated in its articles; or

20 (2) May not be incorporated under this chapter.

21 e. May not be the same as or deceptively similar to:

22 (1) The name, whether foreign and authorized to conduct activities in this
23 state or domestic unless there is filed with the articles a record that
24 complies with subsection 2, of:

25 (a) Another corporation;

26 (b) A corporation incorporated or authorized to do business in this
27 state under another provision of this code;

28 (c) A limited liability company;

29 (d) A limited partnership;

30 (e) A limited liability partnership; or

31 (f) A limited liability limited partnership;

- 1 (2) A name the right to which is, at the time of incorporation, reserved in
2 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
3 45-10.2-11, 45-13-04.2, or 45-22-05;
- 4 (3) A fictitious name registered in the manner provided in chapter 45-11; or
5 (4) A trade name registered in the manner provided in chapter 47-25.
- 6 2. The secretary of state shall determine whether a corporate name is "deceptively
7 similar" to another name for purposes of this chapter.
- 8 3. If the secretary of state determines that a corporate name is "deceptively similar"
9 to another name for purposes of this chapter, then the corporate name may not be
10 used unless there is filed with the articles:
- 11 a. The written consent of the holder of the rights to the name the proposed
12 name is determined to be deceptively similar to; or
13 b. A certified copy of a judgment of a court in this state establishing the prior
14 right of the applicant to the use of the name in this state.
- 15 4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997,
16 or a foreign corporation authorized to do business in this state on that date to
17 continue the use of its name.
- 18 5. This section and section 10-33-11 do not:
- 19 a. Abrogate or limit:
- 20 (1) The law of unfair competition or unfair practices;
21 (2) Chapter 47-25;
22 (3) The laws of the United States with respect to the right to acquire and
23 protect copyrights, trade names, trademarks, service names, or service
24 marks; or
25 (4) Any other rights to the exclusive use of names or symbols; or
26 b. Derogate the common law or the principles of equity.
- 27 6. A domestic or foreign corporation that is the surviving organization in a merger with
28 one or more other organizations, or that acquires by sale, lease, or other
29 disposition to or exchange with an organization all or substantially all of the assets
30 of another organization including its name, may have the same name, subject to

- 1 the requirements of subsection 1, as that used in this state by any of the other
2 organizations, if the other organization whose name is sought to be used:
- 3 a. Was incorporated, organized, formed, or registered under the laws of this
4 state;
 - 5 b. Is authorized to conduct activities or transact business in this state;
 - 6 c. Holds a reserved name in the manner provided in section 10-19.1-14,
7 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - 8 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
9 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 10 7. The use of a name by a corporation in violation of this section does not affect or
11 vitiate its corporate existence, but a court in this state may, upon application of the
12 state or of an interested or affected person, enjoin the corporation from conducting
13 activities under a name assumed in violation of this section, although its articles
14 may have been filed with the secretary of state and a certificate of incorporation
15 issued.
- 16 8. A corporation whose period of existence has expired or that is involuntarily
17 dissolved by the secretary of state pursuant to section 10-33-139 may reacquire
18 the right to use that name by refiling articles of incorporation pursuant to section
19 10-33-08 unless the name has been adopted for use or reserved by another
20 person, in which case the filing will be rejected unless the filing is accompanied by
21 a written consent or judgment pursuant to subsection 2. A corporation that cannot
22 reacquire the use of its corporate name must adopt a new corporate name that
23 complies with the provisions of this section:
- 24 a. By refiling articles of incorporation pursuant to section 10-33-08;
 - 25 b. By amending pursuant to section 10-33-14; or
 - 26 c. By reinstating pursuant to section 10-33-139.
- 27 9. Subject to section 10-33-126, this section applies to any foreign corporation
28 transacting business in this state, having a certificate of authority to transact
29 business in this state, or applying for a certificate of authority.

1 10. An amendment that only changes the name of the corporation may be authorized
2 by a resolution approved by the board and may, but need not, be submitted to and
3 approved by the members as provided in section 10-33-15.

4 **SECTION 63. AMENDMENT.** Section 10-33-34 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise ~~or~~
7 ~~except as provided in article XII of the Constitution of North Dakota~~, there is no cumulative
8 voting.

9 **SECTION 64.** A new subsection to section 10-33-44 of the North Dakota Century Code
10 is created and enacted as follows:

11 Unless otherwise provided in the articles, the bylaws, or the resolution of the board
12 establishing the committee, a committee may create one or more subcommittees,
13 each consisting of one or more members of the committee, and may delegate to a
14 subcommittee any or all of the authority of the committee. In this chapter, unless
15 the language or context clearly indicates that a different meaning is intended:

- 16 a. Any reference to a committee is deemed to include a subcommittee; and
17 b. Any reference to a committee member is deemed to include any reference to
18 a subcommittee member.

19 **SECTION 65.** Section 10-33-72.1 of the North Dakota Century Code is created and
20 enacted as follows:

21 **10-33-72.1. Contractual requirement to submit a matter to the members.** A
22 corporation may agree to submit a matter to its members whether or not the board determines,
23 at any time after approving the matter, that the matter is no longer advisable and recommends
24 that the members reject it.

25 **SECTION 66. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **10-33-73. ~~Action~~ Member action without a meeting ~~by the members.~~** An action
28 required or permitted to be taken at a meeting of the members may be taken without a meeting
29 by written action signed, or consented to by authenticated electronic communication, by all of
30 the members entitled to vote on that action.

- 1 1. If the articles so provide, any action may be taken by written action signed, or
2 consented to by authenticated electronic communication, by the members who
3 hold voting power equal to the voting power that would be required to take the
4 same action at a meeting of the members at which all members were present.
5 However, in no event may written action be taken by members who hold less than
6 a majority of the voting power of all members entitled to vote on that action.
7 a. After the adoption of the initial articles, an amendment to the articles to permit
8 written action to be taken by less than all members requires the approval of
9 all members entitled to vote on the amendment.
10 b. When written action is permitted to be taken by less than all members, all
11 members must be notified immediately of its text and effective date no later
12 than five days after the effective time of the action.
13 c. Failure to provide the notice does not invalidate the written action.
14 d. A member who does not sign or consent to the written action has no liability
15 for the action or actions taken by the written action.
16 2. The written action is effective when signed by the required members, unless a
17 different effective time is provided in the written action.
18 3. When this chapter requires or permits a certificate concerning an action to be filed
19 with the secretary of state, the certificate must indicate if the action was taken
20 under this section.

21 **SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and
22 enacted as follows:

23 **10-34-02.1. Reservation of legislative right.** The legislative assembly reserves the
24 right to amend or repeal the provisions of this chapter. A real estate investment trust formed
25 under or governed by this chapter is subject to this reserved right.

26 **SECTION 68. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North
27 Dakota Century Code is amended and reenacted as follows:

- 28 40. "Signed" means:
29 a. That the signature of a person, which may be a facsimile affixed, engraved,
30 printed, placed, stamped with indelible ink, transmitted by facsimile or
31 electronically, or in any other manner reproduced on the record, is placed on

1 a record ~~as provided under section 41-01-14~~ with the present intention to
2 authenticate that record; and

3 b. With respect to a record required by this chapter to be filed with the secretary
4 of state that:

5 (1) The record is signed by a person authorized to sign the record by this
6 chapter, by the partnership agreement, or by a resolution approved by
7 the affirmative vote of the required proportion or number of partners;
8 and

9 (2) The signature and the record are communicated by a method or
10 medium of communication acceptable by the secretary of state.

11 **SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and
12 enacted as follows:

13 **45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the
14 right to amend or repeal the provisions of this chapter. A limited partnership formed under or
15 governed by this chapter is subject to this reserved right.

16 **SECTION 70. AMENDMENT.** Subsection 1 of section 45-10.2-27 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 1. A record authorized or required to be delivered to the secretary of state for filing
19 under this chapter must be captioned to describe the purpose of the record, be in a
20 medium permitted by the secretary of state, and be delivered to the secretary of
21 state. If the secretary of state determines that a record complies with the filing
22 requirements of this chapter, then the secretary of state shall file the record and,
23 except for an annual report, return a copy of the filed record to the person that
24 delivered it to the secretary of state for filing. That person shall then:

25 a. For a statement of dissociation, send a copy of the filed statement:

26 (1) To the person which the statement indicates has dissociated as a
27 general partner; and

28 (2) To the limited partnership;

29 b. For a statement of withdrawal, send a copy of the filed statement:

30 (1) To the person on whose behalf the record was filed; and

1 (2) If the statement refers to an existing limited partnership, to the limited
2 partnership; and

3 c. For all other records, send a copy of the filed record to the person on whose
4 behalf the record was filed.

5 **SECTION 71. AMENDMENT.** Section 45-10.2-81 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **45-10.2-81. Foreign limited partnership - Amendments to the certificate of**
8 **authority.** If any statement in the application for a certificate of authority by a foreign limited
9 partnership is false when made or becomes false due to changed circumstances, or if the
10 foreign limited partnership changes its name or purposes sought in this state, then the foreign
11 limited partnership shall file with the secretary of state an application for an amended certificate
12 of authority signed by ~~an authorized person~~ at least one general partner correcting the
13 statement and, in the case of a change in the name of the foreign limited partnership, a
14 certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of
15 which the foreign limited partnership is organized.

16 1. In the case of a dissolution, a foreign limited partnership need not file an
17 application for an amended certificate of authority but shall promptly file with the
18 secretary of state a certificate to that effect authenticated by the proper officer of
19 the jurisdiction under the laws of which the foreign limited partnership is organized.

20 2. A foreign limited partnership that changes its name and applies for an amended
21 certificate of authority and which is the owner of a trademark or trade name, is a
22 general partner named in a fictitious name certificate, is a general partner in
23 another limited partnership or limited liability limited partnership, or is a managing
24 partner in a limited liability partnership that is on file with the secretary of state,
25 shall change the name of the foreign limited partnership in each of the foregoing
26 registrations that is applicable when the foreign limited partnership files an
27 application for an amended certificate of authority.

28 3. A foreign limited partnership shall report any change of address of the principal
29 executive office to the secretary of state and need not file an application for
30 amended certificate of authority.

1 **SECTION 72. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 26. "Signed" means:

4 a. That the signature of a person, which may be a facsimile affixed, engraved,
5 printed, placed, stamped with indelible ink, transmitted by facsimile
6 telecommunication or electronically or in any other manner reproduced on the
7 record, is placed on a record, ~~as provided under section 41-01-14~~ with the
8 present intention to authenticate that record; and

9 b. With respect to a record required by this chapter to be filed with the secretary
10 of state, that:

11 (1) The record is signed by a person authorized to do so by this chapter or
12 by a resolution approved by the affirmative vote of the required
13 proportion or number of partners; and

14 (2) The signature and the record are communicated by a method or
15 medium of communication acceptable by the secretary of state.

16 **SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and
17 enacted as follows:

18 **45-13-02.1. Reservation of legislative right.** The legislative assembly reserves the
19 right to amend or repeal the provisions of this chapter. A partnership formed under or governed
20 by this chapter is subject to this reserved right.

21 **SECTION 74. AMENDMENT.** Subsection 6 of section 45-13-05 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 6. Any statement filed under this section must be renewed every five years from the
24 date of the initial filing. A statement of renewal must be executed by the
25 partnership ~~on a form furnished by the secretary of state which is sent to the~~
26 ~~address of the principal executive office at least sixty days before the deadline for~~
27 filing in the same manner as previously executed. If the secretary of state finds
28 that the statement of renewal conforms to the requirements of this section, and the
29 proper filing fee has been paid, the secretary of state shall file the statement of
30 renewal. If the secretary of state finds that the statement of renewal does not so
31 conform, the secretary of state shall return the statement of renewal to the

1 partnership for any necessary corrections. If the statement of renewal is not
2 returned corrected within thirty days after the statement of renewal was returned
3 for correction, the statement of renewal is subject to cancellation. If any
4 partnership fails to file the statement of renewal, the secretary of state shall cancel
5 the initial statement and shall mail notice of the cancellation to the last address of
6 the principal executive office as recorded in the office of the secretary of state.

7 **SECTION 75. AMENDMENT.** Subsection 24 of section 45-22-01 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 24. "Signed" means:

10 a. That the signature of a person which may be a facsimile affixed, engraved,
11 printed, placed, stamped with indelible ink, transmitted by telecommunication
12 or electronically, or in any other manner reproduced on the record, is placed
13 on a record, ~~as provided under section 41-01-14~~ with the present intention to
14 authenticate that record; and

15 b. With respect to a record required by this chapter to be filed with the secretary
16 of state means that:

17 (1) The record is signed by a person authorized to do so by this chapter, or
18 by or pursuant to an agreement among the partners, or by a resolution
19 approved by the affirmative vote of the required proportion or number of
20 partners; and

21 (2) The signature and the record are communicated by a method or
22 medium of communication acceptable by the secretary of state.

23 **SECTION 76. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 2. The secretary of state shall charge and collect for:

26 a. Furnishing a copy of any record or paper relating to a domestic limited liability
27 partnership or foreign limited liability partnership, one dollar for every four
28 pages, or fraction of pages.

29 b. A certificate certifying a copy or reciting facts related to a domestic limited
30 liability partnership or foreign limited liability partnership, ~~twenty~~ fifteen
31 dollars.

1 c. Each page of any record or form sent by electronic transmission, one dollar.

2 **SECTION 77. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota
3 Century Code is amended and reenacted as follows:

4 24. "Signed" means:

5 a. That the signature of a person, which may be a facsimile affixed, engraved,
6 printed, placed, stamped with indelible ink, transmitted by facsimile or
7 electronically, or in any other manner reproduced on the record, is placed on
8 a record, ~~as provided under section 41-01-11~~ with the present intention to
9 authenticate that record; and

10 b. With respect to a record required by this chapter to be filed with the secretary
11 of state, that:

12 (1) The record is signed by a person authorized to sign by this chapter, or
13 pursuant to an agreement among the partners, or by a resolution
14 approved by the affirmative vote of the required proportion or number of
15 partners; and

16 (2) The signature and the record are communicated by a method or
17 medium acceptable by the secretary of state.